041669 JUN 9 2005

No.

OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

ADEL SHESHTAWY, TRI-MAX INDUSTRIES, INC., AND DRILL BIT INDUSTRIES, INC., PETITIONERS

v.

AMAL SHESHTAWY

PETITION FOR A WRIT OF CERTIORARI TO THE FOURTH COURT OF APPEALS OF TEXAS AT SAN ANTONIO, TEXAS

PETITION FOR WRIT OF CERTIORARI

Richard N. Countiss
Counsel of Record
Texas Bar No. 04887000
COUNTISS LAW FIRM
8441 Gulf Freeway
Suite 600
Houston, Texas 77017-5051
TEL: 713/230-2203
FAX: 713/230-2215
Attorney for Petitioners

CURRY & TAYLOR ♦ WASH D.C. ♦ (202) 223-3160 ♦ USSCINFO.COM

QUESTIONS PRESENTED FOR REVIEW

1. Whether a state court can order an involuntary transfer of a patent issued under federal law.

2. Whether due process and the right of confrontation are violated when a party is not allowed to elicit testimony from a judge who has demonstrated bias and prejudice.

TABLE OF CONTENTS

Page(s)

QUESTIONS PRESENTED FOR REVIEW i

TABLE OF AUTHORITIES iv

OPINIONS BELOW 1

BASIS FOR JURISDICTION 1

STATUTORY PROVISIONS INVOLVED 1

STATEMENT 3

REASONS FOR GRANTING THE PETITION 9

CONCLUSION 16

APPENDIX

INDEX OF APPENDIX

Court of Appeals' Opinion 1a

Trial Court's Judgment (Final Decree of Divorce) 17a

Amended Motion to Modify, Correct or Reform the Final Decree of Divorce 41a

Petitioner's Motion to Recuse 54a

Amended Petitioner's Motion for New Trial 64a

Court of Appeals' Order (Motion for Rehearing is DENIED) 74a

Supreme Court of Texas Order
(Corrected Order DENYING
Petitions for Review).....76a

Supreme Court of Texas Order (Motion
for Rehearing is DENIED).....77a

TABLE OF AUTHORITIES

Page(s)

Cases:

Alsenz v. Alsenz,
101 S.W.3d 648 (Tex. App.–Houston [1st Dist.] 2003, pet. denied) 8

Bonito Boats, Inc. v. Thunder Craft Boats, Inc.,
489 U.S. 141 (1989) 10, 11

Brown v. Duchesne,
60 U.S. 183 (1856) 10

Davis v. Alaska,
415 U.S. 308 (1974) 14

Delaware v. Van Arsdall,
475 U.S. 673 (1986) 14

Fulmer v. United States,
83 F.Supp. 137 (D.C. Ala. 1949) 10

Hewett v. Samsonite Corp.,
507 P.2d 1119 (Colo. App. 1973) 10

James v. Campbell,
104 U.S. 356 (1881) 11

Marshall v. Jerrico, Inc.,
446 U.S. 238 (1980) 14

Rodrigue v. Rodrigue,
218 F.3d 432 (5th Cir. 2000), *cert. den.* 539 U.S. 905 (2001) 8

Seymour v. Osborne,
78 U.S. 516 (1870) 11

Silverman v. State Bar of Texas,
405 F.2d 410 (5th Cir. 1968).....11

Waterman v. MacKenzie,
138 U.S. 252 (1890).....11, 12

Rule:

TEX. R. EVID. 613(b).....14

Statute:

35 U.S.C. § 261 10

Secondary Sources:

John A. Thomas, *Who Owns the Intervention?*, 62 TEX. B.J. 996 (1999) 8

OPINIONS BELOW

The opinion of the Fourth Court of Appeals of Texas upon which the petition is based, *Adel Sheshtawy, Tri-Max Industries, Inc., and Drill Bit Industries, Inc. v. Amal Sheshtawy*, 150 S.W.3d 772 (Tex. App.–San Antonio 2004, pet. denied), is copied in the Appendix at App. 1a.

The unpublished order of the trial court in *Adel Sheshtawy, Tri-Max Industries, Inc., and Drill Bit Industries, Inc. v. Amal Sheshtawy*, is copied in the Appendix at App. 17a.

BASIS FOR JURISDICTION

The final judgment of the Fourth Court of Appeals was entered on September 29, 2004 (App. 1a) Petitioner's Motion for Rehearing was denied on October 21, 2004. (App. 73a.) The Supreme Court of Texas denied Petitioner's Petition for Review on January 13, 2005 (App. 75a) and denied Petitioner's Motion for Rehearing on March 11, 2005. (App. 77a.) This petition for writ of certiorari is filed within 90 days of the denial by the Supreme Court of Texas of the petition for rehearing. U.S. SUP. CT. R. 13.3.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

STATUTORY PROVISIONS INVOLVED

1. 35 USCS § 261 (2005)

§ 261. Ownership; assignment.

Subject to the provisions of this title, patents shall have the attributes of personal property.

Applications for patent, patents, or any interest therein, shall be assignable in law by an instrument in writing. The applicant, patentee, or his assigns or legal representatives may in like manner grant and convey an exclusive right under his application for patent, or patents, to the whole or any specified part of the United States.

A certificate of acknowledgment under the hand and official seal of a person authorized to administer oaths within the United States, or, in a foreign country, of a diplomatic or consular officer of the United States or an officer authorized to administer oaths whose authority is proved by a certificate of a diplomatic or consular officer of the United States, or apostille of an official designated by a foreign country which, by treaty or convention, accords like effect to apostilles of designated officials in the United States, shall be prima facie evidence of the execution of an assignment, grant or conveyance of a patent or application for patent.

An assignment, grant or conveyance shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, unless it is recorded in the Patent and Trademark Office within three months from its date or prior to the date of such ~~sub~~sequent purchase or mortgage.

STATEMENT

1. The parties are divorced. - Petitioner Adel Sheshtawy and Respondent Amal Sheshtawy were married in 1996. Adel filed for divorce in 2000 (CR 2).[1] Amal cross-filed (CR 8) and Amal later filed a third-party claim against Petitioners Tri-Max Industries, Inc. ("TMI") and Drill Bit Industries, Inc. ("DBI"). (CR 16; Supp. CR 15.)

After a non-jury trial at which Adel and Amal each appeared *pro se* and DBI and-TMI were represented by counsel, the trial court granted the divorce and gave Amal substantial property interests, including an interest in a specific patent, contrary to U.S. Patent law. (App. 17a.)

2. The husband developed and assigned the patents he was awarded. - Adel started TMI in 1978, in Norman, Oklahoma, to develop, manufacture, and market downhole drilling tools. (8 RR TMI Exs. 1-6.) In 1979, TMI entered in a joint development agreement with General Electric Company (GE) for the application of GE man-made diamond products in oil well drilling bits. (5 RR 102.) TMI grew rapidly and became the industry leader in polycrystalline diamond compact bits. TMI's primary bank failed in 1991, during the oil state banking crisis, and the FDIC assumed TMI's loan and foreclosed on all TMI assets. TMI settled all obligations to the FDIC (5 RR 104) and moved to Houston Texas. (5RR 95.)

---

[1] "CR" refers to the Clerk's Record and "RR" refers to the Reporter's Record from the trial court.

Adel's brother, Farouk, incorporated DBI in 1990 as a Delaware Corporation. (5 RR 133, 141; 8 RR TMI Exs. 1-6; DBI Exs. 1-20.) The evidence is undisputed that DBI is owned by Farouk and two others and that Amal has no ownership interest in DBI. (5 RR 140; DBI Exs. 1-20.)

In 1995, TMI signed an agreement with DBI, allowing DBI to use the TMI trade name and trademark. (8 RR TMI Ex. 2.) DBI does business as Drill Bit Industries, Inc., and Tri-Max Industries, under the agreement of May 1994. (2 RR 8.)

On 1995, DBI and Adel signed a Product Development Agreement. (RR 9/13/02, p. 6; CR 112.) Under the agreement between DBI and Adel, Adel was, for a valuable consideration, to develop expandable element drilling tools and prepare the paperwork needed to obtain a patent. Under the agreement, the patent, if and when issued, was automatically assigned to DBI for its exclusive use for ten years from date of patent issue. Nothing was to be paid to Adel for DBI's use of the patent during the ten year assignment. (RR 9/13/02, p. 6; CR 112.)

Adel developed and obtained a valuable patent pursuant to the agreement with DBI. Amal was aware of the agreement. (RR 9/13/02, p. 6), and received a copy of it with DBI records she was given during discovery. (RR 9/13/02, p. 6; CR 112.)

3. The trial court granted an involuntary transfer of the patents. - Although this undisputed evidentiary record was before the court, the trial judge made the following statement when he orally announced

BEST AVAILABLE COPY

the court's decision at the end of the trial:

> [H]owever, the Court is awarding Mrs. Sheshtawy, since Mr. Sheshtawy testified that he was not an employee of the company and not a shareholder of the company, then any of the patents, trademarks, copy rights or any pending application for patents, trademarks, copy rights would be community property if those were filed during the marriage any time during the marriage, I'll award Mrs. Sheshtawy a 60 percent interest in those items .... He's testified there aren't any, so it shouldn't be a problem; but if there are any, she's acquired a 60 percent interest, dividing the property a 60/40 split.

(7 RR 5-6.)

Then, in the divorce decree, the trial court made the following award to Amal:

> 8. A sixty percent (60%) interest in and to any and all patents, trademarks, copyrights and any other pending patent applications or continuations in part applications and reissued or re-examined applications *continuation or divisional* relating thereto (hereinafter collectively called "patent"), existing or applied for during the period of Petitioner/Cross-Respondent and Respondent/Cross-Petitioner's marriage, including but not limited to, a sixty percent (60%) undivided interest in United States patent No. 6,189,631B1 filed November 12, 1998 and issued February 20, 2001 entitled

"Drilling Tool With Extendable Elements" and any other the following, to wit:

a. All patent licensing revenue;

b. all profits generated by activities covered by the claims of patent including, for example, profits generated by activities from the following tools: "Enlarge While Drilling", "Expandable Stabilizer", "Stabilizer on Demand", "Fullgauge Adjustable Stabilizer", "Cyclone Bit Sub" and "Less Torque Sub"; and *any other tools built on the technology of this patent, and tools within the scope of this patent.*

c. all proceeds which may be generated from settlements or judgments resulting from infringement or accused infringement of patent, including but not limited to, any proceeds from any settlement with Andergauge.

(CR 26.)

Adel and the companies appealed and the Texas court of appeals reversed and remanded for new trial because of numerous trial court errors. (App. 2.) However, the court of appeals refused to conclude that federal patent law prohibited the trial court from giving Amal an interest in the patent in question. (App. 1a-7a.)

4. Adel was denied due process and his right of confrontation by the trial court. Throughout the trial, the trial court exhibited an astonishing level of bias toward, and prejudice against, Adel. The numerous improper acts include (1) ethical slurs directed at Adel (RR 12/27/01, pp. 100-101); (2) denial of Adel's right to elicit testimony from the judge during a recusal hearing, (RR 4/24/03, pp. 105-107); (3) overt assistance to Amal by the trial judge throughout the trial (2 RR 43, 44, 45; 3 RR 8); (4) a close personal relationship between the trial judge and the attorney eventually hired by Amal (RR 4/24/03, pp. 59-68); (5) selective recording of testimony by the court reporter, at the judge's direction (RR 4/24/03, pp. 18, 25, 28-32, 47), and numerous other improper activities alleged in the motion to recuse (App. 54a) and developed in the April 24, 2003 recusal hearing.

Despite these improprieties, and two hearings on Adel's Motion to Recuse, the trial judge was not recused. (App. 9a-11a; RR 4/24/03, pp. 133-134). The Court of Appeals concurred and also refused to order recusal of the trial judge. (App. 9a-11a.)

5. The federal questions were timely raised. - The issues pertinent to U.S. Patent law and its preemption of state law were timely raised in the trial court in Adel's motion to amend, correct or reform the judgment, in which he advised the trial court that its award of a 60% interest in patent No. 6,189,631B1 was erroneous. (App. 64a.) The Court of Appeals addressed and resolved against Adel the patent issues pertinent here, in the following language:

> With regard to the preemption claim, Adel and TMI/DBI primarily rely on the Fifth Circuit's

> decision in *Rodrigue v. Rodrigue*, to contend that federal law preempts community property law in regard to patents. 218 F.3d 432 (5th Cir. 2000). However, in *Rodrigue*, the Fifth Circuit actually held that federal law did not preempt Louisiana's community property law in regard to copyrights. *Id.* at 442. The Fifth Circuit stated, "We discern nothing in the Act's plain wording or legislative history to indicate that Congress–fully aware of the existence of community property laws in a number of states–had any intention of preempting that entire body of non-federal law as well." *Id.* at 440. At least one Texas court has noted that patents taken out during the marriage and the income generated from those patents are community property. *Alsenz v. Alsenz*, 101 S.W.3d 648, 653 (Tex. App.–Houston [1st Dist.] 2003, pet. denied); see generally John A. Thomas, *Who Owns the Intervention?*, 62 TEX. B.J. 996, 1002 (1999) (recognizing joint ownership of a patent may be created by divorce). Since we have not been provided authority to support Adel's preemption claim and have found authority applying Texas's community property laws to patents, we conclude that federal law does not preempt community property law in regard to patents.

(App. 2a-7a.)

The issues pertinent to the denial of due process were raised in the trial court by Adel's motion to recuse (App. 54a) in which he outlined in detail the improprieties, unfair treatment, and favoritism displayed by the trial court (App. 55a-63a), and the violation of the

due process clause by that activity. (App. 61a: "The due process clause for . . . the United States Constitution guarantees a party an impartial tribunal in civil cases.")

The issues pertinent to the denial of the right of confrontation were raised by Adel in his Amended Motion for New Trial (App. 64a) in which he advised the trial court as follows:

> As part of the Sixth Amendment right to Confrontation, a Petitioner must be allowed great latitude to show any fact that would tend to establish ill feeling, bias or motive on the part of the witness testifying against Petitioner, or to establish other relevant facts.

(App. 65a.)

The Court of Appeals resolved the recusal issue against Adel on state law grounds and did not discuss the federal law issues. (App. 9a-11a.)

REASONS FOR GRANTING THE PETITION

The Texas courts have decided important questions of federal law that have not been fully settled by this court and the state courts' resolution of the questions conflicts with relevant decisions of the U.S. Supreme Court.

I.

U.S. Patent Law Preempts State Law And Forbids Involuntary Transfer Of A Patent

A. This important issue should be addressed by the U. S. Supreme Court. - The relationship between state community property law and federal patent law has not been addressed by the U. S. Supreme Court. The Court has held that the federal patent laws preempt state law, *Bonito Boats, Inc. v. Thunder Craft Boats, Inc.*, 489 U.S. 141, 146-48 (1989), but the nature, degree, and extent of that preemption and its impact on state community property law has not been addressed.

The Court should use this case as a vehicle to tell the nation's bench and bar how the sometimes competing rights established by the two bodies of law are to be harmonized. Until the Court does so, the bench will continue to struggle with the issue, as the lower courts have in this case, and counsel will be unable to assist clients in charting a predictable course for the ownership and protection of patent rights.

B. The state courts intentionally ignored federal law. - A patent right is in the nature of an intangible incorporeal right. *Hewett v. Samsonite Corp.*, 507 P.2d 1119 (Colo. App. 1973). It is property personal to the inventor and situs is with the individual holding it. 35 U.S.C. § 261; *Fulmer v. United States*, 83 F.Supp. 137, 151 (D.C. Ala. 1949). Perhaps most important for this case, the U.S. Supreme Court held in *Brown v. Duchesne*, 60 U.S. 183 (1856), that "the right of property which a patentee has in his invention . . . is derived altogether from . . . statutory provisions; . . . ." *Id.* at 195.

Consistently, the court said in *Seymour v. Osborne*, 78 U.S. 516, 533 (1870) that patents "are property in the holder of the patent" and in *James v. Campbell*, 104 U.S. 356, 358 (1881) that a patentee has "an exclusive property in the patented invention."

Those holdings mean, in this case, that Amal cannot acquire a property right in the patent, because nothing in the statutory scheme contemplates ownership by involuntary transfer to a divorcing spouse.

The Texas trial court and court of appeals erred by failing to recognize that federal patent law preempts Texas community property law. *Bonito Boats, Inc. v. Thunder Craft Boats, Inc., supra*; *Silverman v. State Bar of Texas*, 405 F.2d 410, 413-15 (5th Cir. 1968) ("[F]ederal patent laws . . . are a part of the supreme law of the land, and when state law touches an area of those federal statutes, federal policy may not be set at naught . . . even if the state law is enacted in the exercise of otherwise undoubted state power.") The Texas court of appeals specifically rejected the foregoing principles and ignored the cases cited to it by holding that "federal law does not preempt community property law in regard to patents." (App. 4a.)

While it is possible for a patent owner to assign or devise an interest in a patent, the "monopoly thus granted is one entire thing, and cannot be divided into parts, except as authorized by those laws." *Waterman v. MacKenzie*, 138 U.S. 252, 255 (1890). Nothing in the statutory scheme of patent law allows any court to force the owner of a patent to execute an involuntary assignment of that patent to some other person. The concept of community property is not part of the

statutory scheme and is not contemplated by the preemptive federal law.

Neither federal nor Texas courts have addressed the nature and scope of the interaction between federally created patent rights and Texas community property laws, but one thing is certain: when there is a collision, the federal law prevails. *Id.*

The most likely resolution of the problem is found in a 5th Circuit decision in the analogous field of copyright law. In *Rodrigue v. Rodrigue*, 218 F.3d 432 (5th Cir. 2000), *cert. den.* 539 U.S. 905 (2001), George Rodrigue, creator of the blue dog paintings, contended that his copyrighted paintings were exempt from any claim by his wife under Louisiana community property law because federal copyright law vested title in him alone. The federal court agreed that George owned the copyrights under federal law and had the exclusive right to manage, control, and deal with the copyrights in any manner not inconsistent with federal law. *Id.* at 441. The court also noted that federal law generally prohibits an involuntary transfer of a copyright. *Id.* at 435, 439.

After carefully analyzing the competing interests, the court concluded that the only community right the other spouse could have in this federally created property right was the right to receive and enjoy the economic benefits produced or derived from the property. *Id.* at 438.

If that reasoning is applied here, (and it should be noted that the patent and copyright statutory schemes are comparable) it is obvious that the lower courts erred. Federal patent law does not permit the involuntary

transfer of 60% of a patent to Amal. That action is directly contrary to the purpose and scope of the patent laws, as explained in the foregoing cases. If she has any interest, it is only an interest in the income generated to Adel by the patent during the marriage. Certainly Amal neither has nor can receive an ownership interest in the patent, under the statutory scheme.

II.
The Trial Judge Was Constitutionally Disqualified

Adel filed two unsuccessful motions to recuse the trial judge. The first motion was filed after the judge told Adel:

> "THE COURT: So, at any rate, let me just - I am ready to order, and I've got some real concerns. And part of my concerns are I don't know what your legal status is or what you want it to be, but I do realize that you both immigrated to this country. You have a certain obligation, when you to immigrate to this country, to the laws of this country. And, quite frankly, even if you don't like the laws - if you don't like them enough, of course, you are free to return to Syria or, in your case, Canada or Syria. I don't know what countries you are free to return to."

(RR 12/27/01, pp. 100-101.)

In the second motion, Adel alleged 31 acts by the trial judge and others that were sufficient to disqualify the judge. (App. 54a-60a.) However, the court refused to allow Adel to elicit evidence from the trial judge. (RR 4/24/03, pp. 105-107.)

The due process clauses of the United States Constitution guarantees a party an impartial and disinterested tribunal in civil cases. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980).

Further, under the Sixth Amendment right to confrontation, a party must be allowed great latitude to show any fact that would tend to establish ill feeling, bias or motive on the part of the witness testifying against Petitioner, or to establish other relevant facts. *Delaware v. Van Arsdall*, 475 U.S. 673, 678 (1986); *Davis v. Alaska*, 415 U.S. 308, 316-17 (1974). Moreover, state rules of evidence expressly recognize the right to impeach a witness by proof of circumstances or statements showing bias or interest of a witness. TEX. R. EVID. 613(b).

Only two issues are pertinent when a person is called to testify. The witness must be competent, and the evidence must be relevant. TEX. R. EVID. 401, 601. Evidence is relevant "if it tends to make the existence of a fact that is of consequence to the determination of the action more probable or less probable then it would be without the evidence." *Texas A&M University v. Bishop*, 105 S.W.3d 646, 660 (Tex. App.-Houston [14th Dist.] 2002, no pet.); TEX. R. EVID. 801. Nothing shields a judge from testifying.

These fundamental rights were violated in this case. Adel alleged in a sworn motion a lengthy list of acts establishing the bias and prejudice of the trial court. (App. 54a.) He was entitled under the Sixth Amendment to elicit testimony from the trial judge about, among other things, (1) his failure to instruct the court reporter to record at least two hearing, (2) ex parte communications with Amal and her counsel, (3) the

lengthy and close relationship between the trial judge and Amal's counsel, and (4) the prejudicial ethnic remarks directed at Adel by the trial judge.

The purported reason for protecting the judge from testifying was Adel's failure to establish a predicate that would show the relevance of the judge's testimony. (RR 4/24/03, p. 105.) Yet, there was, by that time, evidence from the court reporter that she only recorded hearings when the judge told her to do so; that at least two hearings in the case had not been recorded, (RR 4/24/03, pp. 18, 25, 28-32, 47); and that the trial judge and opposing counsel had a long and close relationship (RR 4/24/03, pp. 59-68). Each of these matters was directly pertinent to the issues of the judge's bias and prejudice and impartiality, and Adel's constitutional right to an impartial tribunal.

The court of appeals rejected Adel's constitutional argument by holding that Adel waived his complaint because he did not preserve by bill of review the substance of the testimony he wanted to elicit from the judge. Yet, as required by Texas procedure, Adel made an offer of proof in which he stated that he wanted to call the trial judge to elicit evidence about (1) the failure of the court reporter to record at least two hearings in the case, (2) ex parte communications between the court and the opposing party, (3) the relationship between the trial judge and Amal's counsel, and (4) various prejudicial remarks made to Adel by the trial judge during various proceedings. (RR 4/24/03, pp. 105-107, 130.)

Had Adel been allowed to develop his allegations, he would have established due process violations that would have mandated the trial judge's recusal. (RR

4/24/03, pp. 105-107, 130.)

CONCLUSION

For the foregoing reasons, Adel Sheshtawy respectfully asks the Court to issue a writ of certiorari to review the decision of the Fourth Court of Appeals for the District of Texas at San Antonio and, upon review, to reverse the judgments of the Fourth Court of Appeals and the District Court and remand the case for trial and grant Petitioner all other relief to which he is entitled.

Respectfully submitted,
By:
Richard N. Countiss
Counsel of Record
Texas Bar No. 04887000
COUNTISS LAW FIRM
8441 Gulf Freeway,
Suite 600
Houston, Texas 77017-5051
TEL: 713/230-2203
FAX: 713/230-2215
Attorney for Petitioner

(any footnotes trail end of each document)

No. 04-03-00109-CV

COURT OF APPEALS OF TEXAS, FOURTH DISTRICT, SAN ANTONIO

Adel SHESHTAWY, Tri-Max Industries, Inc., and Drill Bit Industries, Inc., Appellants

v.

Amal SHESHTAWY, Appellee

September 29, 2004, Delivered

September 29, 2004, Filed

COUNSEL: For Appellant: Richard N. Countiss, Countiss Law Firm, Houston, TX, Eileen M. Gaffney, Attorney at Law, Houston, TX.

For Appellee: Shawn R. Casey, Attorney at Law, Houston, TX, Karen D. Poe, Attorney at Law, Houston, TX.

JUDGES: Opinion by: Alma L. Lopez, Chief Justice. Sitting: Alma L. Lopez, Chief Justice, Sarah B. Duncan, Justice, Phylis J. Speedlin, Justice.

OPINIONBY: Alma L. Lopez

OPINION: This is an appeal from a divorce case dissolving the marriage of Adel Sheshtawy ("Adel") and his wife, Amal Sheshtawy ("Amal"). Adel asserts seven issues on appeal, and Tri-Max Industries, Inc. ("TMI") and Drill Bit Industries, Inc. ("DBI") assert one issue challenging the trial court's award of a 60% interest in

patents to Amal. Because the trial court erred with regard to the patent award, spousal maintenance award, and the imposition of a lien on Adel's separate property, we reverse the portion of the trial court's judgment relating to the division of property and remand the cause for further proceedings consistent with this opinion. The remainder of the trial court's judgment is affirmed.

BACKGROUND

Adel and Amal were married on May 16, 1996. Adel filed for divorce on December 14, 2000. Amal filed an answer and a counter petition for divorce on February 6, 2001. Amal also filed a third party cross-petition against DBI and TMI, alleging that the corporations are the alter egos of Adel.

Both Adel and Amal appeared pro se at trial while DBI and TMI were represented by counsel. At the end of the trial, the trial court announced his rulings and directed Adel to prepare a judgment and set the case for entry of judgment. After a few continuances, a hearing for the entry of judgment was held on September 13, 2002. Although Adel again appeared pro se, Amal was represented by counsel at the hearing. The trial court entered judgment on the divorce decree prepared by Amal's counsel.

PATENT AWARD

In Adel's first issue on appeal and TMI/DBI's sole issue on appeal, Adel and TMI/DBI contend that the trial court erred in awarding Amal a 60% interest in any and all patents existing or applied for during the marriage, including United States Patent No. 6,189,631B1. Adel

and TMI-DBI contend that the award was erroneous because: (1) federal law preempts state law and forbids such an award; (2) Adel does not own the patent; and (3) the evidence is legally or factually insufficient to support the award. Adel and TMI/DBI argue that the specific patent was not among the exhibits offered at trial; therefore, there was no evidence introduced at trial that Adel acquired or owned such a patent during the marriage. Moreover, Adel and TMI/DBI entered into a development agreement before the marriage pursuant to which Adel assigned his rights in any resulting patents to TMI/DBI.

With regard to the preemption claim, Adel and TMI/DBI primarily rely on the Fifth Circuit's decision in *Rodrigue v. Rodrigue*, to contend that federal law preempts community property law in regard to patents. 218 F.3d 432 (5th Cir. 2000). However, in *Rodrigue*, the Fifth Circuit actually held that federal law did not preempt Louisiana's community property law in regard to copyrights. Id. at 442. The Fifth Circuit stated, "We discern nothing in the Act's plain wording or legislative history to indicate that Congress - fully aware of the existence of community property laws in a number of states - had any intention of preempting that entire body of non-federal law as well." Id. at 440. At least one Texas court has noted that patents taken out during the marriage and the income generated from those patents are community property. Alsenz v. Alsenz, 101 S.W.3d 648, 653 (Tex. App.--Houston [1st Dist.] 2003, pet. denied); *see generally* John A. Thomas, *Who Owns the Invention?*, 62 TEX. B.J. 996, 1002 (1999) (recognizing joint ownership of a patent may be created by divorce). Since we have not been provided authority to support Adel's preemption claim and have found authority

applying Texas's community property laws to patents, we conclude that federal law does not preempt community property law in regard to patents.

We next consider the sufficiency of the evidence supporting the patent award. Adel and TMI/DBI challenge the trial court's implied finding that Adel owned the patents during the marriage. In reviewing the legal sufficiency of the evidence, we consider only the evidence and inferences tending to support the finding of the disputed fact and disregard all evidence and inferences to the contrary. *See* Lenz v. Lenz, 79 S.W.3d 10, 13, 45 Tex. Sup. Ct. J. 781 (Tex. 2002). In reviewing the factual sufficiency of the evidence, we must consider and weigh all the evidence and may overturn the finding only if it is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Ortiz v. Jones, 917 S.W.2d 770, 772, 39 Tex. Sup. Ct. J. 294 (Tex. 1996). If we overturn a finding on a factual sufficiency ground, we must "clearly state why the [] finding is factually insufficient or is so against the great weight and preponderance as to be manifestly unjust." *See* Pool v. Ford Motor Co., 715 S.W.2d 629, 635, 29 Tex. Sup. Ct. J. 301 (Tex.1986).

Our review of the record reveals minimal evidence regarding Adel's inventions and patents. At trial, Adel testified he owned 16 patents, all of which had been registered before the marriage. Adel stated that he had not registered any patents during the marriage. Although Amal elicited testimony from Deborah Panzer, a former accounting secretary at TMI/DMI, indicating that Adel had invented some new drill bits in the last 3 to 4 years, Amal failed to proffer evidence

showing that Adel had registered a patent during the marriage. At the conclusion of trial, the trial court orally announced its decision:

> The Court is awarding Mrs. Sheshtawy, since Mr. Sheshtawy testified that he was not an employee of the company and not a shareholder of the company, then any patents, trademarks, copyrights or pending application for patents, trademarks or copy rights would be community property. If those were filed . . . any time during the marriage, I'll award Mrs. Sheshtawy a 60 percent interest in those items. . . . He's testified there aren't any, so it shouldn't be a problem[.]

This ruling demonstrates the trial court's assessment that no evidence had been offered to show Adel filed any patents during the marriage.

At the hearing on the entry of the divorce decree, the decree proposed by Amal made mention of a specific patent. At this point, Amal was represented by an attorney, Shawn Casey. Casey offered a certified copy of a document from the patent office that allegedly showed that a specific patent was "actually in [Adel's] name [and] acquired during the course of the marriage." Although the record reflects that this document was admitted into evidence, the document is not part of the record. In response, Adel argued that Amal knew that the patent had been under development since 1995 and belonged to DBI. Adel explained to the trial court that he was a party to an agreement with DBI. Under the terms of the agreement, DBI bought Adel's concept for a tool, paid for its development, and paid for the resulting patent. The trial court confronted Adel regarding his inconsistent testimony that he had not registered any patents during the marriage. Adel

responded that he had been questioned regarding whether he owned any patents during the marriage and that he had not owned any patents because they belonged to DBI under their 1995 agreement. Although the product development agreement was not admitted as evidence at the hearing, it is included in the record as an attachment to Adel's "motion to modify, correct or reform the final decree of divorce."

Following the foregoing arguments at the hearing, the trial court signed a divorce decree that awarded Amal a "sixty percent (60%) interest in and to any and all patents, trademarks, copyrights and any other pending patent applications or continuations in part applications and reissued or re-examined applications continuation or divisional relating thereto (hereinafter collectively called "patent"), existing or applied for during the period of [Adel] and [Amal]'s marriage, including but not limited to, a sixty percent (60%) undivided interest in United States patent No. 6,189,631B1 filed November 12, 1998 and issued February 20, 2001 entitled "Drilling Tools With Extendable Elements" . . . . Accepting that Casey's unsworn reference to a certified copy of a document from the patent office is legally sufficient to support the trial court's general award of patent rights, the evidence is factually insufficient to support the award of the specific patent. The document is not contained within our record, and Casey's unsworn statement did not reveal the patent number or the nature of the patented invention. Furthermore, Adel's alleged ownership of any patents filed during the marriage was substantially called into question by Adel's unrefuted testimony regarding the existence of the 1995 product development agreement between Adel and DBI. Because the agreement was not

introduced into evidence, but was only attached to a post-judgment motion, the record does not conclusively establish that Adel did not own any patents filed during the marriage; however, a finding that Adel owned any such patents is contrary to the great weight and preponderance of the evidence. We sustain Adel's first issue and TMI/DBI's sole issue.

SPOUSAL MAINTENANCE

In his second issue, Adel contends that the trial court erred by ordering spousal maintenance in the amount of $ 600 per month for three years because the minimal legal and evidentiary requirements that must be satisfied to impose a spousal maintenance order were not met. We review an award of spousal maintenance under an abuse of discretion standard. Smith v. Smith, 115 S.W.3d 303, 305 (Tex. App.-Corpus Christi 2003, no pet.); Alexander v. Alexander, 982 S.W.2d 116, 119 (Tex. App.-Houston [1st Dist.] 1998, no pet.). Thus, we will not disturb an order awarding spousal maintenance unless the trial court acts arbitrarily or unreasonably, or without any reference to guiding rules and principles. E.I. du Pont de Nemours & Co. v. Robinson, 923 S.W.2d 549, 558, 38 Tex. Sup. Ct. J. 852 (Tex. 1995); Limbaugh v. Limbaugh, 71 S.W.3d 1, 12 (Tex. App.-Waco 2002, no pet.).

The Texas Family Code authorizes trial courts to award spousal maintenance only if the parties meet certain eligibility requirements. TEX. FAM. CODE ANN. § 8.051 (Vernon Supp. 2004). When, as here, n1 "the spouse from whom maintenance is requested was convicted of . . . a criminal offense that also constitutes an act of family violence under Title 4 and [the] offense

occurred: (A) within two years before the date on which a suit for dissolution of the marriage is filed; or (B) while the suit is pending," the requesting spouse is eligible for spousal maintenance. TEX. FAM. CODE ANN. § 8.051(1) (Vernon Supp. 2004). Once a court determines that a spouse is eligible for maintenance payments, section 8.052 provides a non-exhaustive list of factors the court may consider in determining "the nature, amount, duration, and manner of periodic payments." *See* TEX. FAM. CODE ANN. § 8.052 (Vernon Supp. 2004); Limbaugh, 71 S.W.3d at 12-13. Generally, it is presumed that maintenance is not warranted unless the spouse seeking maintenance has exercised diligence in:

> (1) seeking suitable employment; or
>
> (2) developing the necessary skills to become self-supporting during a period of separation and during the time the suit for dissolution of the marriage is pending.

TEX. FAM. CODE ANN. § 8.053(a) (Vernon Supp. 2004). This presumption does not apply, however, "to a spouse who is not able to satisfy the presumption [] because of an incapacitating physical or mental disability." TEX. FAM. CODE ANN. § 8.053(b) (Vernon Supp. 2004). Thus, a spouse who is unable to seek employment or develop employment skills due to an incapacitating physical or mental disability can in essence rebut the presumption with proof of his or her disability.

Adel contends, in part, that the trial court erred in

awarding spousal maintenance to Amal because she failed to rebut the presumption that spousal maintenance is unwarranted. Our review of the record reveals that Amal presented no evidence that she had been diligently seeking employment or developing skills necessary to become self-supporting. Amal's only testimony regarding employment was delivered at a pretrial hearing on temporary orders. At that hearing, Amal testified that she had not sought employment after Adel and Amal's separation because she did not have legal residency papers, and she admitted that she had not attempted to apply for legal residency papers after the separation. Moreover, Amal offered no evidence that she had an incapacitating physical or mental disability. Therefore, Amal failed to provide any evidence to rebut the presumption that spousal maintenance was unwarranted, and the trial court abused its discretion in ordering spousal maintenance in the divorce decree. Adel's second issue is sustained.

MOTION TO RECUSE

In his third issue, Adel contends that his two recusal motions were erroneously denied and that the visiting judge erroneously quashed the subpoena served on the trial judge, the Honorable Frank Rynd. First, Adel contends that the visiting judge erroneously quashed the subpoena regarding Judge Rynd because Adel would have elicited testimony relevant to Judge Rynd's alleged impartiality. Adel, however, made no attempt to secure an offer of proof or present a bill of exception memorializing the substance of the testimony he sought to elicit from Judge Rynd. Thus, Adel has failed to preserve error with regard to the granting of the motion to quash. Akin v. Santa Clara Land Co., 34

S.W.3d 334, 339 (Tex. App.-San Antonio 2000, pet. denied) (failure to make an offer of proof waives any complaint about the exclusion of the evidence on appeal); Ludlow v. DeBerry, 959 S.W.2d 265, 270 (Tex. App.-Houston [14th Dist.] 1997, no writ).

Second, Adel contends that the visiting judge erroneously denied his motion to recuse because the evidence demonstrated that Judge Rynd's "impartiality might reasonably be questioned," and Judge Rynd had a personal bias in favor of Amal and a prejudice against Adel. Rule 18b(2) of the Texas Rules of Civil Procedure provides that a judge shall recuse himself in any proceeding in which "his impartiality might reasonably be questioned," or "he has a personal bias or prejudice concerning the subject matter or a party, or personal knowledge of disputed evidentiary facts concerning the proceeding." TEX. R. CIV. P. 18b(2). If a motion to recuse is denied, the judge's ruling "may be reviewed for abuse of discretion on appeal from the final judgment." TEX. R. CIV. P. 18a(f).

The visiting judge denied Adel's motion to recuse on the grounds that Adel had failed to present any evidence to support the motion. In an effort to show Judge Rynd's alleged destruction and manipulation of the record, Adel elicited the testimony of Judge Rynd's court reporter, who testified that she only recorded hearings when instructed by the trial judge and that at least two hearings had not been recorded. This testimony does not show a destruction or manipulation of the record. In an effort to show Judge Rynd's partiality for Amal, Adel elicited the testimony of Shawn Casey, Amal's attorney at the end of the trial and in post-trial proceedings, who testified that he and

Judge Rynd had both been members of the same social club in college; he had been a speaker at Judge Rynd's swearing in ceremony; Judge Rynd had dinner at his home; and he had contributed to Judge Rynd's campaign. Adel alleges that Casey's testimony shows a long and close relationship between Judge Rynd and Casey and serves as evidence that Judge Rynd was partial to Casey and his client, Amal.

In his argument at the recusal hearing, Adel also eluded to sections of the trial record which he argued showed disparaging and belittling remarks by Judge Rynd to Adel. However, "judicial remarks during the course of a trial that are critical or disapproving or even hostile to counsel, parties, or their cases, ordinarily do not support recusal." Ludlow, 959 S.W.2d at 271. "Such remarks may [support recusal] if they reveal an opinion deriving from an extrajudicial source, and such remarks will do so if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible." *Id.* Here, during the recusal hearing, Adel offered two excerpts from the trial record into evidence to show Judge Rynd's alleged favoritism for Amal and antagonism toward Adel. We do not believe these excerpts reveal any statements that support recusal.

Having reviewed the recusal hearing record, we do not find that the visiting judge acted arbitrarily or unreasonably, or without any reference to guiding rules and principles, in ruling on Adel's motion to recuse. E.I. du Pont de Nemours & Co., 923 S.W.2d at 558. Thus, the visiting judge did not abuse his discretion in denying Adel's motion to recuse. Adel's third issue is overruled.

DEED OF TRUST ON SEPARATE PROPERTY

In his fourth issue, Adel contends that the trial court erred in ordering him to secure a deed of trust on his separate property in favor of Amal in order to secure Adel's assumption of the community indebtedness. Adel argues that the circumstances in this case do not authorize the trial court to impose a lien on his separate property.

When dividing marital property on divorce, trial courts may impose equitable liens on one spouse's separate real property to secure the other spouse's claim for economic contribution or right of reimbursement for community improvements to that property. TEX. FAM. CODE ANN. § 3.407 (Vernon Supp. 2004); Heggen v. Pemelton, 836 S.W.2d 145, 146, 35 Tex. Sup. Ct. J. 959 (Tex. 1992). Trial courts, however, may not impress such liens simply to ensure a just and right division. Heggen, 836 S.W.2d at 146.

Here, Adel and Amal borrowed $ 135,000 and secured the loan with a lien on Adel's separate property, which was their home. The divorce decree ordered Adel to assume this community debt. In addition, the decree ordered Adel to secure, execute, acknowledge, and surrender a deed of trust on the home in favor of Amal in order to secure his assumption of the community debt. The trial court did not find that Amal had a claim for economic contribution or a claim of a right of reimbursement for community improvements to Adel's separate property. Thus, the trial court erred by imposing an equitable lien on Adel's separate property for reasons other than to secure Amal's claim for economic contribution or Amal's right of

reimbursement. *See* Heggen, 836 S.W.2d at 146. We sustain Adel's fourth issue.

TRIAL PREPARATION

In his fifth issue, Adel contends that he was denied his constitutional right to have adequate time to prepare for trial. Adel was incarcerated ten days before trial under an order of commitment that was issued by the trial court because Adel failed to comply with the trial court's temporary orders. Since Adel appeared pro se, he argues his incarceration made it difficult for him to prepare for trial. However, Adel failed to move for a continuance at trial and instead opposed Amal's motion for a continuance. Thus, Adel failed to preserve this issue for our review by failing to move for continuance on the grounds that he did not have adequate time to prepare for trial. *See* Gonzalez v. Nielson, 770 S.W.2d 99, 101 (Tex. App.-Corpus Christi 1989, writ denied). Adel's fifth issue is overruled.

DIVISION OF PROPERTY

In his sixth issue, Adel contends that the trial court abused its discretion in dividing the community estate because (1) the court could not award the patent rights to Amal as a matter of a law, (2) there was no justification for giving Amal a 60% interest in patent rights that developed from a concept solely developed by Adel before marriage, and (3) the trial court ordered Adel to pay in its entirety the only sizeable community debt. It is well settled that Texas courts are given wide discretion to divide the property of the community estate in a manner that the court deems "just and right," and this discretion will not be disturbed on

appeal unless it is clearly demonstrated that the trial court has abused its discretion. TEX. FAM. CODE ANN. § 3.63 (Vernon 1993); Smith v. Smith, 715 S.W.2d 154, 155 (Tex. App.-Texarkana 1986, no writ); Allen v. Allen, 646 S.W.2d 495, 496 (Tex. App.-Houston [1st Dist.] 1982, no writ). The mere fact that the community estate is unequally divided does not constitute an abuse of discretion. Zamora v. Zamora, 611 S.W.2d 660, 662 (Tex. Civ. App.-Corpus Christi 1980, no writ).

"Once reversible error affecting the 'just and right' division of the community estate is found, the court of appeals must remand the entire community estate for a new division." Jacobs v. Jacobs, 687 S.W.2d 731, 733, 28 Tex. Sup. Ct. J. 337 (Tex.1985). When a trial court mischaracterizes separate property as community property, the error requires reversal because the subsequent division divests a spouse of his or her separate property. Eggemeyer v. Eggemeyer, 554 S.W.2d 137, 140, 20 Tex. Sup. Ct. J. 308 (Tex.1977); McElwee v. McElwee, 911 S.W.2d 182, 189 (Tex. App.-Houston [1st Dist.] 1995, pet. denied). Similarly, when a trial court includes a valuable asset belonging to a third party in its division, the mischaracterization of the third party's property is reversible error affecting the trial court's "just and right" division, and the entire community estate must be remanded for a new division. Hopf v. Hopf, 841 S.W.2d 898, 902 (Tex. App.--Houston [14th Dist.] 1992, no pet.).

With regard to the patent awards, we previously held that the evidence is factually insufficient to support the trial court's characterization of the patent rights. Because the trial court may have mischaracterized property belonging to a third party as a part of the

community estate, the division of the entire community estate must be remanded for the trial court to reconsider. *See* Hopf, 841 S.W.2d at 902.

Adel also raises a complaint regarding the trial court's division of the community debt. Because this issue is likely to arise when the trial court considers the division of the community estate on remand, we briefly address Adel's complaint. The trial court ordered Adel to pay the most sizeable community debt, which had been reduced to $ 120,000 from its initial principal balance of $ 135,000. Adel argues that by allocating this entire debt to Adel, the trial court's division of the property was manifestly unfair. Testimony varied regarding the use of the loan proceeds. Amal testified that the proceeds were placed in an account for the benefit of TMI/DBI while Adel testified that much of the proceeds were used to cover the losses of American Medical Supply, another company that was owned by Adel. Under both accounts, the debt was incurred by the couple for Adel's business or business activities. Thus, the trial court did not abuse its discretion by ordering Adel to pay this debt. *See* Morris v. Morris, 894 S.W.2d 859, 863 (Tex. App.-Fort Worth 1995, no writ) (holding that it was not abuse of discretion to award the husband debts that were incurred by him for his business). Adel's sixth issue is overruled.

JUDICIAL CONSENT TO FILE SUIT

In his seventh issue, Adel contends the trial court erred by imposing an anti-suit injunction, prohibiting Adel from suing third parties who were collaterally involved in the matter. Adel conceded, however, that no written order exists with regard to such an injunction. Instead,

Adel raises this issue in the event "the court's actions can be construed as a continuation of the injunction." Because Adel is unable to provide a record cite to a written order, the record does not support his contention. Without support in the record, Adel's seventh issue has not been preserved for this court's consideration. *See* TEX. R. APP. P. 33.1, 38.1(h).

CONCLUSION

The portion of the trial court's judgment relating to the division of the community estate is reversed, and the cause is remanded to the trial court for further proceedings consistent with this opinion. The remainder of the trial court's judgment is affirmed.
Alma L. Lopez, Chief Justice

- - - - - - - - - - - - - - - Footnotes - - - - - - - - - - - - - - -

N1 Adel admits that he was convicted of assaulting Amal and that the offense occurred on November 6, 2000. He disputes his guilt, and his conviction is currently on appeal.

BEST AVAILABLE COPY

No. 2000-63348

In the District Court
Harris County Texas
309th Judicial District

In the Matter of The Marriage of

Adel Sheshtawy and Amal Sheshtawy

v.

Tri-Max Industries, Inc. and Drill Bit Industries, Inc.
Cross-Defendants

9/13/2002

FINAL DECREE OF DIVORCE

On July 8, 2002, came on to be heard this cause of action.

Appearances

Petitioner/Cross-Respondent, ADEL SHESHTAWY appeared in person pro se and announced ready for trial.

Respondent/Cross-Petitioner AMAL SHESHTAWY in person pro se and announced ready for trial.

Cross Defendant, DRILL BIT INDUSTRIES, INC. appeared by and through its attorney of record, Larry P. Walton, and announced ready for trial.

Cross Defendant, TRI-MAX INDUSTRIES, INC, appeared by and through its attorney of record, Larry P. Walton, and announced ready for trial.

Intervenor, KAREN POE, appeared in person pro se and her cause of action was subsequently severed from this divorce proceeding by the Court.

Record

The making of a record of testimony was duly reported by Hipolita Lopez, official court reporter for the 309th Judicial District Court.

Jurisdiction and Domicile

The Court finds that the pleadings of Petitioner/Cross-Respondent are in due form and contain all the allegations and prerequisites required by law. The Court, after receiving evidence, finds that it has jurisdiction of this case and of all the parties and that at least sixty days have elapsed since the date the suit was filed. The Court finds that, at the time this suit was filed, Petitioner/Cross-Respondent has been a domiciliary of Texas for the proceeding six-month period and a resident of the county in which this suit was filed for the preceding ninety-day period. All persons entitled to citation were properly cited.

Jury

A jury was waived and all questions of fact and law were submitted to the Court.

Divorce

It is ORDERED, ADJUDGED and DECREED that Petitioner/Cross-Respondent ADEL SHESHTAWY and Respondent/Cross-Petitioner AMAL SHESHTAWY are divorced and that the marriage between them is dissolved on the grounds of insupportability.

Children of the Marriage

The Court finds that there is no child of the marriage and that none is expected.

Division of MaritaI Estate

The Court finds that the following is a just and right division of the parties marital estate, having due regard for the rights of each party.

It is ORDERED, ADJUDGED and DECREED that Petitioner/Cross-Respondent ADEL SHESHTAWY is awarded the following as his sole and separate property, and Respondent/Cross-Petitioner is divested of all right, title, interest, and claim in and to that property:

1. All household furniture, fixtures, goods, art objects, collectibles, appliances' and equipment in the possession of Petitioner/Cross-Respondent of subject to his sole control.

2. All clothing, jewelry, and other personal effects in the possession of Pedtioner/Cross-Respondent or subject to his sole control save and except public library books, set of tapes, Wife's personal clothing and telephone books.

3. All sums of cash in the possession of Petitioner/Cross-Respondent or subject to his sole control, including funds on deposit, together with accrued but unpaid interest, in banks, savings institutions, or other financial institutions, which accounts stand in Petitioner/Cross-Respondent's sole name or from which Petitioner/Cross-Respondent has the sole right to withdraw funds or which are subject to Petitioner/Cross-Respondent's sole control.

4. All sums, whether matured or unmatured, accrued or unaccrued, vested or otherwise, together with all increases thereof, the proceeds therefrom, and other rights related to any profit-sharing plan, retirement plan, Keogh plan, pension plan, employee stock option plan, 401(k) plan, employee savings plan, accrued unpaid bonuses, disability plan or other benefits existing by reason of Petitioner/Cross-Respondent's past, present or future employment.

5. All policies of life insurance (including cash values) insuring Petitioner/CrossRespondent's life.

6. All brokerage accounts, stocks, bonds, mutual funds and securities registered in Petitioner/Cross-Respondent's name, together with all dividends, splits and other rights and privileges in connection with them.

7. The 1985 300 D Mercedes motor vehicle, vehicle Identification number WDBAB33AO79044, together with all prepaid insurances, keys and tile document

8. A forty percent (40%) interest interest in and to any and all patents, trademarks, copyrights. and any other pending patent applications or continuations in

part applications and reissued or re-examined applications relating thereto (hereinafter collectively called "patent"), existing or applied, continuation or divisional for during the period of Petitioner/Cross-Respondent and Respondent/Cross-Petitioner's marriage, including but not limited to, a forty percent (40%) undivided interest in United States patent No. 6,189,631B1 filed November 12, 1998 and issued. February 20, 2001 entitled "Drilling Tool With Extendable Elements" and any other the following, to-wit:

a. all patent licensing revenue;

b. all profits generated by activities covered by the claims of patent including, for example, profits generated by activities from the following tools: "Enlarge While Drilling", "Expandable Stabilizer", Stabilizer on Demand", "Fullgauge Adjustable Stabilizer", "Cyclone Bit Sub" and "Less Torque Sub"; and any tools built on the technology of this patent and othertools within the scope of this patent.

c. all proceeds which may be generated from settlements or judgments resulting from infringement or accused infringement of patent, including but not limited to, any proceeds from any settlement with Andergauge.

It is ORDERED, ADJUDGED and DECREED that the Respondent/Cross-Petitioner, AMAL SHESHTAWY, is awarded the following as her sole and separate property, and Petitioner/Cross-Respondent, ADEL SHESHTAWY, is divested of all right, title, interest, and claim in and to that property.

1. All household furniture, fumishing's, fixtures, goods, art objects, collectibles, appliances and equipment in the possession of Respondent/Cross-Petitioner or subject to her sole control.

2. All clothing, jewelry; and other personal effects in the possession of the Respondent/Cross-Petitioner or subject to her sole control.

3. That certain personal property belonging to Wife currently in Husband's possession, to-wit public library books, set of tapes, Wife's personal clothing and telephone books.

4. All sums of cash in the possession of Respondent/Cross-Petitioner or subject to her sold control, including funds on deposit, together with accrued but not unpaid interest in banks, savings institutions or other financial institutions which accounts stands in Respondent/Cross-Petitioner's sole name or from which Respondent/Cross-Petitioner has the sole right to withdraw funds or which are subject to Respondent/Cross-Petitioner's sole control.

5. All sums, whether matured or unmatured, accrued or unaccrued, vested or otherwise, together with all increases thereof, the proceeds therefrom and any other rights related to any profit-sharing plan, retirement plan, Keogh plan, pension plan, employee stock option plan, 401(k) plan, employee savings -' plan, accrued unpaid bonuses, disability plan or other benefits existing by reason of Respondent/Cross-Petitioner's past, present or future employment.

6. All policies of life insurance (including cash values) insuring Responden/Cross-Petitioner's life.

7. All brokerage accounts, stocks, bonds, mutual funds and securities registered in Respondent/Cross-Petitioners name together with all dividends, splits and other rights and privileges in connection with them.

8. A sixty percent (60%) interest in and to any, and all patents, trademarks, copyrights and any other pending patent applications or continuations in part applications and reissued or re-examined applications continuation or divisional relating thereto (hereinafter collectively called "patent"), existing or applied for during the period of Petitioner/Cross-Respondent and Respondent/Cross-Petitioner's marriage, including but not limited to, a sixty percent (60%) undivided interest in United States patent No. 6,189,6311B1 filed November 12, 1998 and issued February 20, 2001 entitled "Drilling Tool With Extendable Elements" and any other the following, to-wit:

a. all patent licensing revenue;

b. all profits generated by activities covered by. the claims of patent including, for example, profits generated by activities from the following tools:. "Enlarge While Drilling", "Expandable Stabilizer", "Stabilizer on Demand", "Fullgauge Adjustable Stabilizer", "Cyclone Bit Sub" and "Less Torque Sub". and any other tools built on the technology of this patent, and other tools within the scope of this patent.

c. all proceeds which may be generated from settlements or judgments resulting from infringement

or accused infringement of patent, ncluding but not limited to, any proceeds from any settlement with Andergauge.

Debts to Wife.

It is ORDERED, ADJUDGED and DECREED that Wife shall pay, as a part of the division of the estate of the parties, the following debts and obligations and shall indemnify and hold Husband harmless from any failure to so discharge such debts and obligations:

1. Creditcard obligations incurred by Wife. Any outstanding credit card charges incurred solely by Wife.

2. Miscellaneous Debts. Any and all debts, charges, liabilities, and other obligations incurred solely by Wife from and after 11-6-2000 the date of separation, unless express provision is made in this decree to the contrary.

3. Encumbrances. All encumbrances, ad valorem taxes, liens, assessments, or other charges due to become due on the real and personal property awarded to Wife in this decree unless express provision is made herein to the contrary.

Debts to Husband

It is ORDERED, ADJUDGED and DECREED that Husband shall pay, as a part of the division of the estate of the parties, the following debts and obligations and shall indemnify and hold Wife harmless from any failure to so discharge such debts and obligations:

1. The outstanding balance on that one certain promissory note dated August 5, 1998 in the original principal sum of $135,000.00 executed by Adel Sheshtawy and spouse Amal Shama and made payable to ACG Financial Services (IMC), Inc. which said note is secured by a Deed of Trust against the property confirmed as Husband's separate property located at 11706 Highgrove Drive, Houston, Harris County, Texas 77077.

2. Credit card obligations incured by Husband. Any outstanding credit card charges incurred solely by Husband.

3. Encumbrances. All encumbrances, ad valorem taxes, liens, assessments, or other charges due to become due on the real and personal property awarded to Husband in this decree unless express provision is made herein to the contrary.

4. Miscellaneous Debts. Any and all debts, charges, liabilities, and other obligations incurred solely by Husband from and after 11-6-2000, the date of separation, unless express provision is made in this decree to the contrary.

It is ORDERED, ADJUDGED and DECREED that each party shall send to the other party a copy of any correspondence from a creditor or taxing authority concerning any potential liability of the other party within five (5) business days of receipt of such correspondence.

Spousal Support

Based on the testimony of the witnesses and the circumstances presented in this case, the Court makes the following findings with respect to Respondent/Cross-Petitioner AMAL SHESHTAWY's eligibility for spousal maintenance, pursuant to Texas Family Code chapter 8:

1. The Court find Respondent/Cross-Petitioner AMAL SHESHTAWY has been a victim of domestic violence under Title 4 and is eligible for maintenance under the provisions of the Texas Family Code §8.002;

2. The Court finds no credible testimony refuting the good character of AMAL SHESHTAWY.

Accordingly, it is ORDERED, ADJUDGED and DECREED that ADEL SHESHTAWY pay to AMAL SHESHTAWY as post-divorce maintenance the sum of $600.00 per month with the first payment of $600.00 being due and payable on September 16, 2002, and like $600.00 payment being due and payable on the 16th day of each consecutive calendar month thereafter until the earliest of one of the following events occurs;

a) the expiration of thirty-six (36) months;

b) death of either Petitioner/Cross-Respondent or Respondent/Cross-Petitioner;

c) remarriage of Respondent/Cross-Petitioner

d) further orders of the Court affecting the spousal maintenance obligation, including a finding of cohabitation Respondent/Cross-Petitioner;

e) successful appeal by ADEL SHESHTAWY of conviction in cause No. 102963

It is further ORDERED that all post-divorce spousal maintenance ordered above shall be made by ADEL SHESHTAWY by timely depositing the sums ordered in this decree with Bank of America, located at 500 Dallas Street, Houston, Texas 77002 or at any authorized branch of Bank of America and depositing said funds into the bank in the name of AMAL SHESHTAWY under account number 2666414130.

Contemporaneously with the signing of this decree, this Court has signed a wage withholding order to enforce the provisions of the post-divorce maintenance order and any sums paid in accordance with that order shall constitute a credit against the spousal maintenance obligation ordered above.

Third Party Cross-Defendant

Based on the argument of counsel and the testimony of the witnesses, the court finds that Cross-Defendants TRI-MAX INDUSTRIES, INC. and DRILL BIT INDUSTRIES, INC., are not the alter ego of Petitioner/Cross-Respondent, ADEL SHESHTAWY, and there is no evidence sufficient to prove piercing of corporate veil.

Therefore, it is ORDERED that no assets or property, real or personal, owned by TRI-MAX INDUSTRIES, INC. and DRILL BIT INDUSTRIES, INC. prior to or during the marriage of the parties herein shall be awarded to Respondent/Cross-Petitioner/Cross-Respondent AMAL SHESHTAWY as part of the

division of the community estate herein. It is further ORDERED that no other damages be awarded to Respondent/CrossPetitioner/Cross-Respondent AMAL SHESHTAWY against Third Party Cross-Defendants TRI-MAX INDUSTRIES, INC. and DRILL BIT INDUSTRIES, INC.

Confirmation of Separate Property

It is ORDERED, ADJUDGED and DECREED that the following described property is confirmed as the separate property of Petitioner/Cross-Respondent ADEL SHESHTAWY

The real property commonly known as 11706 Highgrove Drive, Houston, Harris County, Texas 77077 together with all improvements located thereon and all contents therein.

Attorney's Fees

It is ORDERED that Karen D. Poe is awarded a judgement of $7,082.46 against ADEL SHESHTAWY as attorney's fees and expenses. No further attorney's fees are awarded to any other attorneys or parties in this case. Each party shall be responsible for the balance of his or her own attorney fees incurred as a result of legal representation in this case.

Injunctive Relief

The Court finds that because of the conduct of Petitioner/Cross-Respondent, ADEL SHESHTAWY, and Respondent/Cross-Petitioner, AMAL SHESHTAWY, a permanent injunction should be

granted as appropriate relief because there is no adequate remedy at law.

The permanent injunction granted below shall be effective immediately and shall be binding on ADEL SHESHTAWY and on AMAL SHESHTAWY; on their agents, servants, employees and attorneys and on those persons in active consent or participation with those who receive actual notice of this order by personal service or otherwise.

It is ORDERED, ADJUDGED and DECREED that ADEL SHESHTAWY and AMAL SHESHTAWY are permanently enjoined from:

Causing physical contact or bodily injury to the other party or threatening the other party with imminent bodily injury.

Communicating in person, by telephone or in writing with the other party or in any other manner for the purpose of causing harassment to the other party.

Going within 500 feet of where each other resides or is employed.

Execution and Exchange of Documents

It is ORDERED, ADJUDGED and DECREED that ADEL SHESHTAWY and AMAL SHESHTAWY shall execute all instruments necessary to effect this Decree and that they have all appropriate and necessary writs, execution and process, as many and as often -

as is necessary to accomplish the execution and final disposition of this judgment.

It is ORDERED, ADJUDGED and DECREED that if not previously done so, Husband shall appear at 6:00 p.m. on Friday, September 13, 2002 at the offices of attorney Shawn Casey at 5433 Westheimer, Suite 920, Houston, Texas 77056 and execute, acknowledge and surrender to said attorney:

1. Deed of Trust to Secure Assumption in the form which makes up Exhibit "A" attached hereto; and

2. Assignment of 60 per cent interest in United States patent No. 6,189,631B1 filed November 12,1998 and issued February 20, 2001 entitled "DrillingTool With Extendable Elements" in the form which makes up Exhibit "B" attached hereto.

which was awarded to Wife above in this decree.

It is further ORDERED, ADJUDGED and DECREED that if not previously done so, Husband shall appear at 6:00 p.m. on Thursday, October 24, 2002 at the offices of attorney Shawn Casey at 5433 Westheimer, Suite 920, Houston, Texas 77056 and surrender to said attorney all personal property belonging to Wife still in his possession which was awarded to Wife in this decree, to-wit: public library books, set of tapes, Wife's personal clothing, and telephone books.

Court Costs

It is ORDERED, ADJUDGED and DECREED that costs of the court are to be borne by the party who incurred them.

Survival of Temporary Orders

It is ORDERED, ADJUDGED and DECREED that those court-ordered obligations for temporary spousal support as ordered by this Court in temporary orders signed in this cause on December 28, 2001 survive this decree and remain enforceable by this Court by way of including but not limited to, the enforcement of that one certain "Order Holding Respondent in Contempt and for Suspension of Commitment" previously signed in this cause.

Clarifying Orders

Without affecting the finality of this Decree of Divorce, this Court expressly reserves the right to make orders necessary to clarify and enforce this decree.

Relief Not Granted

It is ORDERED, ADJUDGED and DECREED that all relief requested in ibis case and not expressively granted is denied.

Exhibit A

DEED OF TRUST TO SECURE ASSUMPTION

THE STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF HARRIS

That ADEL SHESHTAWY (hereinafter called "Grantor") for the purpose of securing the indebtedness hereinafter desrnbed, and in consideration of the sum of TEN AND NO/100 DOLLARS ($10:00) paid by the Trustee hereinafter named, the receipt of which is hereby acknowledged, and for the further consideration of the uses, purposes and trusts hereinafter set forth, has granted, sold and conveyed, and by these presents does grant, sell and convey unto Martha J. Hanna, Tmstee, whose address for notice hereunder is 5433 Westheimer, Suite 920, Houston, Texas 77056, and her substitutes or successors as hereinafter provided, all of the following described property known as 11706 Highgrove Drive, Houston, Harris County, Texas 77077 more particularly described as follows, to-wit:

Lot Seventeen (17) to Block Ten (10), of Lakeside Place Section Four (4), subdivision in Harris County, Texas, according to the map or plat thereof recorded to Volume 224, page 149, of the map records of Harris County, Texas.

together with all improvements presently existing or hereafter placed thereon, and with the rights, privileges and appurtenances thereto belonging (collectively called the "Property").

By Decree of Divorce signed m the 309th District Court under cause number 200063348 styled In the Matter of

the Marriage of ADEL SHESHTAWY and AMAL SHESHTAWY, the Property was confirmed as belonging to Grantor's separate estate and as part of the division of the marital estate between Grantor and Beneficiary, it was expressly ordered that Grantor pay the outstanding balance on the following indebtedness, town:

The outstanding balance on that one certain promissory note dated August 5, 1998 in the original principal sum of $135,000.00 executed by Adel Sheshtawy and spouse Amal Shama and made payable to ACG Financial Services (IMC),Inc. which said note is secured by a Deed of Trust against the property described hereinabove.

For value received to secure Grantor's assumption, Grantor conveys the Property to Trustee in trust. Grantor warrants and agrees to defend the title to the Property. If Grantor performs all the covenants of the note and deed of trust assumed and if Beneficiary has not filed a notice of advancement, a release of the deed of trust assumed shall release this Deed of Trust to Secure Assumption.

Beneficiary's Rights

1. Beneficiary may appoint in writing a substitute or successor trustee, succeeding to all rights and responsibilities of Trustee.

2. If Grantor fails to perform any of Grantor's obligations under the note or deed of trust assumed, Beneficiary may, at his/her option

a. demand that such default be cured by performance tendered to and accepted by the holder of the note assumed within ten (10) days after date of the demand or such period of time as may be required by the Texas Property Code, which ever is longer (such time period being hereinafter called the "Cure Period") or

b. Beneficiary may advance any sum required to cure such defaut(s) and/or perform any obligations required to cure such default(s) on behalf of Grantor and then be reimbursed by Grantor on demand for any sums so advanced, including attorney's fees, plus interest on those sums from the dates of payment at the highest legal rate. The sum to be reimbursed shall be secured by this Deed of Trust to Secure Assumption,

3. Beneficiary may file aswom notice of such advancement in the office of the county derk where the Property u located. The notice shall detail the dates, amounts, and purposes of the sums advanced and the legal description of the Property.

4. If Grantor fails on demand to cure the default(s) under The note and/or deed of trust assumed or to reimburse Beneficiary for the sums advanced, and such failure continues after the Cure Period has expired, then Beneficiary may:

a. request Trustee to foreclose this lien, in which case Beneficiary or Beneficiary's agent shall post the Property for foreclosure sale without demand or notice except as may be required by Section 51.002 of the Texas Property Code, as amended (all rights to further demand and notice being hereby expressly waived), and

b. purchase the property at any foreclosure sale by offering the highest bid and then have the bid credited to the reimbursement of Beneficiary,

Trustee's Duties

If requested by Beneficiary to foreclose this lien, Trustee shall:

1. either personally or by agent give notice of the foreclosure sale as required by the Texas Property Code as then amended:

2. enforce this trust at the request of any Beneficiary (which request shall be presumed) and sell the Property with or without first having taken possession of the same and in whole or in part, as the acting Trustee may select (all rights to a marshalling of assets of Grantor being expressly waived hereby), to the highest bidder for cash at public auction m the area of the Courthouse designed for that purpose by the Commissioner Court of the County m which the Property is situated on the first Tuesday of any month as specified in such notice, after giving notice of the time, place and terms of sale and the Property to be sold by (i) the acting Trustee or any person chosen by him filing a copy of the notice thereof in the office of the County Clerk of each County where the Property is situated and by posting or causing to be posted written or preprinted notice thereof at least twenty one (21) days superseding the date of said sale at the Count Courthouse door of each County, and (ti) the Beneficiary or any person chosen by it, at least twenty one (21) days preceding the date of said sale, serving written notice of such proposed sale by certified mail.

3. from the proceeds of the sale, pay, in this order.

a. expenses of foreclosure, including a commission to Trustee of 5% of the bid;

b. to Beneficiary, the full amount advanced, attorney's fees, and other charges due and unpaid;

c. any amounts required by law to be paid before payment to Grantor; and

d. to Grantor, any balance.

General Provisions

1. If any of the Property is sold under this Deed of Trust, Grantor shall immediately surrender possession to the purchaser. If Grantor fails to do so, Grantor shall become a tenant at sufferance of the purchaser, subject to an action for forcible detainer.

2. Recitals in any Trustee's deed conveying the Property will be presumed to be true.

3. Proceeding under this Deed of Trust to Secure Assumption, filing suit for foreclosure, or pursuing any other remedy will not constitute an election of remedies.

4. This lien shall be superior to liens later created even if Beneficiary has made no advancements when later liens are created.

5. If any portion of the advancements cannot be lawfully secured by this Deed of Trust to Secure

Assumption, payments shall be applied first to discharge that portion.

6. No sale under this Deed of Trust to Secure Assumption shall extinguish the lien created by this instrument.

7. Interest on the debt secured by this Deed of Trust to Secure Assumption shall not exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law; any interest in excess of that maximum amount shall be credited on the principal of the debts, or if that has been paid, refunded. On any acceleration of required or permitted prepayment, any such excess shall be canceled automatically as of the acceleration or prepayment or, if already paid, credited on the principal of the debt or, if the principal of the debt has been paid, refunded. This provision overrides other provisions to this and all other instruments concerning the debt.

8. When the context requires, singular nouns and pronoun shall include the plural.

9. This Deed of Trust to Secure Assumption shall bind, inure to the benefit of, and be exercised by successors in interest of all parties.

10. In case of the death, inability, refusal or incapacity of the herein named Tmstce to act, or at the option of any Beneficiary at any time and without cause or notice, a successor or substitute Trustee may be named, constituted and appointed. Any successor or substitute Trustee may be named, constituted and appointed without procuring the resignation of the

former Trustee and without other formality than the execution and acknowledgment by Beneficiary of a written instrument (which instrument, if Beneficiary is a corporation, shall be executed by the President or any Vice President and without the necessity of any action by the Board of Directors authorizing such appointment) appointing and designating such successor or substitute Trustee, whereupon such successor or substitute Trustee shall become vested with and succeed to all of the rights, titles, privileges, powers and duties of the Trustee named herein: Such right of appointment of a substitute or successor Trustee shall exist as often and whenever for any of said causes the original or successor or substitute Trustee cannot or will not act or has been removed as herein provided.

11. Grantor acknowledges this Deed of Trust to Secure Assumption is given in order to comply with the terms and conditions of that one certain Decree of Divorce entered or to be entered by the 309th District Court of Harris County, Texas in cause number 2000-63348 styled In the Matter of the Marriage of ADEL SHESHTAWY and AMAL SHESHTAWY.

Exhibit B
ASSIGNMENT

IN CONSIDERATION OF TEN DOLLARS ($10.00) cash in hand paid to me by AMAL SHESHTAWY, the assignee, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, I, ADEL SHESHTAWY, the assignor, having made an invention entitled "DRILLING TOOL WITH EXTENDABLE ELEMENTS", U.S. Patent No. 6,189,631, while married to AMAL SHESHTAWY do hereby ASSIGN, SELL and CONVEY unto said AMAL SHESHTAWY, her heirs, legal representatives, assigns, administrators and executors, a sixty percent (60%) undivided interest in all right, title and interest throughout the world in and to:

1. United States of America Patent No. 6,189631B1 filed on November 12,1998 and issued February 20, 2001, entitled "DRILLING TOOL WITH EXTENDABLE ELEMENTS" (hereinafter called "invention");

2. all applications for patent or like protection on said invention that have now been or may in the future be made by us or our legal representatives, including' any continuation, continuation-in-part and any other utility applications that may be based on this invention, whether in the United States of America or any other place anywhere in the world;

3. all patents and like protection that have now been or may in the future be granted on said invention to ADEL SHESHTAWY or his legal" representatives,

whether in the United States of America or in any other country or place anywhere in the world;

4. all substitutions for and divisions, continuations, continuations-in-part; renewals, reissues, extensions and the like of said applications and patents and like grants, including without limitation, those obtained or permissible under past, present and future laws and statutes; and

5. all rights of action on account of past, present and future unauthorized use of said invention and for infringement of said patents and like protection;

and I covenant that I and my heirs, legal representatives, assigns, administrators and executors will execute all papers and perform such other acts as may be reasonably necessary to give AMAL SHESHTAWY and her heirs, legal representatives, assigns, administrators and executors the full benefit of this Assignment.

No. 2000-63348

In the District Court
Harris County Texas
309th Judicial District

In the Matter of The Marriage of

Adel Sheshtawy and Amal Sheshtawy

v.

Tri-Max Industries, Inc. and Drill Bit Industries, Inc.
Cross-Defendants

9/27/2002

AMENDED MOTION TO MODIFY, CORRECT OR REFORM THE FINAL DECREE OF DIVORCE

ADEL SHESHTAWY, Petitioner, Pro Se, asks the Honorable Court to Modify, Correct or Reform THE FINAL DECREE OF DIVORCE signed by the Court on September 13, 2002 and in support thereof would show.

A. Introduction

1. Petitioner is ADEL SHESHTAWY: Respondent is AMAL SHESHTAWY

2. Petitioner filed for divorce on December 14, 2000

B. Facts

3. The Honorable Judge, on August 2, 2002 issued final ruling on the above style and numbered case.

4. The Honorable Judge, on August 2, 2002 ordered the Petitioner Pro.Se. to prepare a FINAL DECREE OF DIVORCE for the Courts signature (L.22, P.10. CRT. REC. August 2, 2002).

5. The Petitioner prepared THE FINAL DECREE OF DIVORCE draft and served it on AMAL SHESHTAWY, Respondent Pro.Se., Karen Poe, Intervener and Larry Walton, attorney for third party on Monday, August 19, 2002

6. The Petitioner filed on August 19, 2002 THE FINAL DECREE OF DIVORCE approved by all the parties except the Respondent, with the Court for the hearing scheduled on August 23, 2002 (Exhibit #1)

7. On August 23, 2002 hearing, the Respondent requested a Conth-ance to hire an attorney. The Court granted the Respondent Continuance and rescheduled the hearing for September 6, 2002.

8. On September 6, 2002 hearing, the Respondent and attorney Shawn Casey requested a Continuance to hire a second attorney. The Court granted the Respondent Continuance and rescheduled the hearing for September 13, 2002. No notice of appearance or motion for substitution of counsel was ever filed with the Court by attorney Shawn Casey as Respondent's attorney of records.

9. On September 12, 2002 the Petitioner received from the Respondent and attorney Shawn Casey an

incomplete draft of FINAL DECREE OF DIVORCE with incorrect changes. Attorney Shawn Casey transmitted by fax on September 12,.2002 the incomplete draft to the other parties in the case with a misleading cover sheet which lead one of the parties to believe that attorney Shawn Casey represented the Petitioner. (Exhibit #2).

10. On September 13, 2002 at 9:15am outside 309 Family Court, attorney Shawn Casey, and the Respondent handed the Petitioner a FINAL DECREE OF DIVORCE. The Petitioner attempted to read Casey's document, the Court called the parties at 9:30 for the scheduled hearing.

11. The Petitioner informed the Honorable Judge; Frank Rynd that he received the Respondent's version of THE FINAL DECREE OF DIVORCE only 15 minutes earlier and had not had a chance to read it. The Petitioner requested a Delay or Continuance of the hearing to discuss the changes with the Respondent's attorney.

12. Honorable Judge, Frank Rynd denied the Petitioners Motion for Delay or Continuance of the hearing and stated on the record quote "I will. sign the order and if you don't like it, you can file for a new trial" end quote. The Honorable Judge Frank Rynd signed the document without reading it.

13. Respondent and attorney Shawn Casey did not comply with the Local Rule 3.8, which requires furnishing all opposing parities with a copy of the proposed order at least Five (5) days prior to entry date. Neither the Petitioner or the Third Party

Defendant or Intervener had sufficient notice of the Final Decree of Divorce transmitted by attorney Shawn Casey to the Court on Sdptember 13, 2002.
More important the FINAL DECREE OF DIVORCE as prepared by Attorney Shawn Casey and submitted to the Court on September 13, 2002 is substantial different from the draft transmitted to the parties on September 12, 2002 and did not reflect the Court ruling on August 2, 2002.

C. Arguments and Authorities

14. The Court should modify the judgment because it is incorrect. Under Texas Rule of Civil Procedure 3293, the Court has the power to modify the judgment as long as it retains plenary power over the judgment. See L.M. Healthcare, Inc v Childs, 929 S.W.2d 442.443-44 (Tex 1996).

15. IMPROPER CAPTION OF THE CASE
THE FINAL DECREE OF DIVORCE signed by the Court in this case on September 13, 2002 is erroneous with a caption not accordance to Tex. Fm. Co. §6.405.A. Neither the Petitioner; Adel Sheshtawy or the Respondent, Amal Sheshtawy, were ever married to Drill Bit Industries or TRI-MAX Industries, nor has the Petitioner ever filed any claim against TRI-MAX Industries or Drill Bit Industries. The Court failure to modify, correct and/or reform its order in the respect renders the order invalid.

16. IMPROPER AWARDING OF SEPERATE CORPORATE PROPERTIES TO THE PETITIONER & RESPONDENT

THE FINAL DECREE OF DIVORCE signed by the Court in this case on September 13, 2002 is erroneous in including profits generated by activities for the following properties "Enlarge While Drilling", "Expandable Stabilizer", Stabilizer on Demand", "Full Gauge Adjustable Stabilizer", "Cyclone Bit Sub" and "Less Torque Sub" (page 4, #8b and page 6, #8b). No evidence has been introduced during the trial of this case by either the Petitioner or Respondent to show the above mention properties are community properties. These properties are part of Drill Bit Industries dba TRI-MAX Industries, Inc. The Court's failure to modify, correct and/or reform its order in this respect effectively award the Petitioner, and the Respondent properties owned by Drill Bit Industries Inc. Inc. dba TRI-MAX Industries, Inc.

17. IMPROPER AWARD OF PROCEEDS FROM SETTLEMENTS WITH ANDERGAUGE

THE FINAL DECREE OF DIVORCE signed by the Court on September 13, 2002 is erroneous in including any proceeds from settlement with Andergauge (page 4. #8c and page 6, #8c). Andergauge is in violation of terms of commercial agreement between Andergauge and Drill Bit Industries, Inc. dba TRI-MAX Industries, Inc. signed in May 8, 1998, the United States patent no. 6.189.631B1 was filed in November 12, 1998 and issued in February 20, 2001. The Petitioner has not and can not assert claim of infringement on a patent which has not been filed or issued against any third party. Unless the order is modified, corrected and/or reformed to exclude any potential judgment or settlement with Andergauge is effectively injecting the Petitioner and Respondent in a commercial agreement they are not part of it.

18. INCORRECT FINDING OF THE COURT THAT THE WIFE HAS BEEN A VICTIM OF DOMESTIC VIOLENCE

THE FINAL DECREE OF DIVORCE signed by the court on September 13, 2002 is erroneous in finding the wife has been a victim of domestic violence. The only evidence introduced is the wife's testimony alleging that the Petitioner attempted to strangle her on November 6, 2000 when she refused to leave the residence. The Petitioner denies forcefully, vigorously, vehemently and emphatically the Respondents allegation. The Petitioner recognizes that our society is living in the post O.J. Simpson trial and if any wife calls the police accusing her husband of domestic violence the System, Police, Grand Jury, District Attorneys and Judges rush to relieve the guilt of what happened to Nicole Simpson and the failure of the system to protect her, Pg. 70 L 16 of the Criminal Case Records (Exhibit #3) clearly supports the above statement. The police officer stated on the record that before he arrested the Petitioner on November 6, 2000, he did not see the Petitioner or interview him to hear the other side of the story because, quote "they are going to lie anyway" The Petitioner's testimony under oath and evidence introduced on December 27, 2001 hearing clearly support that the mark on the Respondents neck is inconsistent with her allegation that the Pettioner attempted to strangle her on November 6, 2000 (Exhibit #4). The existence of these pictures prior. to November 6, 2000 further supports the Petitioners testimony that the Respondent fabricated the alleged assault to obtain her US Citizenship under the Violence Against Women Act.

BEST AVAILABLE COPY

The Criminal Case resulted from the Respondent allegation is on appeal. The law is settled that a conviction from which an appeal has been taken is not considered to be a final conviction until the conviction is affirmed by the appellate court. Jones v. State, 711 S. W.2d, 634 (Tex Cr. App 1998), Carter v. State, 510 S.W.2d, 219 (Tex Cr. App 1974), Arbuckle v. State, 132 Tex. Ct. R. 371,105 S.W.2d, 219 (Tex Cr. App 1937). The Court's failure to modify, correct and /or reform its order in this respect effectively assumes the Petitioner guilty until proven innocent.

19. INCORRECT FINDING OF THE COURT THAT NO CREDIBLE TESTIMONY REFUTING THE GOOD CHARACTER OF AMAL SHESHTAWY

THE FINAL DECREE OF DIVORCE signed by the Court on September 13, 2002 is erroneous in finding that there was no credible testimony refuting the good character of Amal Sheshtawy.'The Petitioner agrees with the Honorable Judge that mentioning the immoral behavior of the Respondent is repulsive but the Petitioner must remind the Honorable Court that it was the Respondent that opened the door of this subject. (Crt. Rec. 12/27101 Pg. 58 L 5)

Few examples of the immoral character of the Respondent:

- A person running from the resident when the husband returns unexpectedly at 12:00 noon to recover his spare reading glasses (Respondent's deposition Pg. 51 L 19). The wife claimed that the person had been Anna Hasselbring, which has been proven to be false.

- The Respondent's statement to the Petitioner on November 5, 2000 when she returned on or about 9:15 pm quote "As far as you neglected me, I went with another person" end quote. Also the marks on her private parts confirmed her statement (Crt. Rec. December 27, 2001 Pg. 77 L 20)

- A man was seen entering room #311 at the Sun Suite Hotel, which was her room, with her on August 9, 2001 at 11:30 pm and spent the night with her. (Amal deposition October 10, 2001 Exhibit 8) Exhibit #6

- During the cross examination of the Respondent at the December 27, 2001 hearing the Respondent did not affirm or deny what she was doing as part of her job with the Syrian Foreign Intelligence in Damascus Syria before the marriage to the Petitioner. The Respondent used evasive answers. (December 27, 2001 hearing Pg. 58 L 19)

These are only a few examples of several evidence's introduced during the trial of this case showing the character of the Respondent, Amal Sheshtawy. The Court's failure to Modify, Correct and/or Reform its order in this respect is effectively rewarding the Respondent for her capacity to distort the truth.

20. INCORRECT ORDER TO DELIVER TO THE RESPONDENT PROPERTIES NOT IN THE POSSESSION AND/OR CONTROL OF THE PETITIONER AND TO ENTER A BUILDING WITH ENHNANT RISK TO THE PETITIONER'S LIFE.

THE FINAL DECREE OF DIVORCE signed by the Court on September 13, 2002 is erroneous in requesting that the Petitioner deliver public library books, set of tapes and phone books to 5433 Westheimer, Suite 920, Houston, Texas 77056. None of these properties are in possession or under, the control of the Petitioner. During the trial nothing was ever mentioned about these properties. The above mentioned address is where the Syrian Government Consultant exists and the existence of the Petitioner in this building at the time is known to the Respondent represent a risk to his life. The Court's failure to modify, correct and/or reform its order places Petitioner in a position of risk to his life.

21. INCORRECT ORDER AWARDING THE RESPONDENT INTEREST IN U.S. PATENT NO. 6.189.631 B1.

THE FINAL DECREE OF DIVORCE signed by the Court on September 13, 2002 is erroneous in awarding the Respondent 60% interest in U.S. Patent No. 6.189.631B1 filed in November 12. 1998. The above mention patent entitled "Drilling Tool With Extendable Elements" was developed on or about January 1995. The final development of the patent includes, but not limited to, tool models manufactured, material and components purchased, lab and field tests and commercial promotion was paid for by Drill Bit Industries (DBI) Inc. dba TRI-MAX Industries, Inc. The above mentioned patent was assigned to Drill Bit Industries (DBI) Inc. dba TRI-MAX Industries, Inc. as per attached (Exhibit #7) product development agreement executed on October 3, 1995. The Respondent, Amal Sheshtawy, testified during the trial on July 9, 1996 that she was aware of this patent on or about March 1996, before the marriage.

22. INCORRECT AMOUNT AND DURATION OF SPOUSAL ALIMONY

THE FINAL DECREE OF DIVORCE signed by the Court on September 13, 2002 is erroneous in awarding the Respondent, Amal Sheshtawy, alimony and maintenance of $600 per month for 36 months. The order of Alimony is erroneous o the follonwing grounds.

- The spouse, from whom maintenance is requested, conviction of the alleged spousal abuse is not final. (TX. Fm. Co. § 8.002-1B) The Court is assuming the Petitioner is guilty until proven innocent.

- The Respondent is able to support herself through appropriate employment and does not suffer any form of physical or mental disability which is clear from the Respondent's performance on July 8, 9, 10 and 11, 2002 during the final trial of the case (TX. Fm. Co. § 8.002-2A).

- The Respondent clearly does not lack earning ability in the labor market with a Bachelors and Masters degree in International Relation from American University (Respondent dep. Pg. 25 L 9, 2/19/01) and Canadian Citizenship (TX. Fm. Co § 8.002-2C).

- The Petitioner is reaching 63 years old with documented chronically heart condition and clear symptoms of Alzheimer. In the last two years the Petitioner was unable to obtain a regular full time employment as he was obliged to represent himself in the Divorce case as the result of his limited financial resources..The Petitioner lives modestly on his limited income and balance of a mortgage he obtained in 1998

on his residence. The Petitioner has no health insurance, and drives a 1984 car. When the Petitioner was obliged to leave his residence in 1998, due to the Respondent's behavior, he was unable to pay $500 per month for an apartment rental and had to spend two years sleeping in his office with no hot water or adequate sleeping accommodations. The Respondent's continuous transfer of the community or Petitioner's personal properties to her personal properties during the short marriage worsened the Petitioner's acute financial position. The Petitioner clearly lacks the ability to comply with the Court Order (TX. Fm. Co. § 8.003-5)

- The amount of maintance ordered by the Court is in violation of TX. Fm. Co § 8;006-a2.

23. FAILURE OF THE COURT TO DIVIDE THE COMMUNITY LIABILITIES BETWEEN THE PETITIONER & RESPONDENT

THE FINAL DECREE OF DIVORCE signed by the Court in this case on September 13, 2002 is erroneous for failure to divide the current balance of the mortgage loan obtained by the Petitioner & Respondent on August 18, 1998 on the Petitioner's personal property to pay for the community indebtness and for community expenses till November 2000. The current balance of this loan as of October 1, 2002 is $115,161.51 with a monthly payment of $1,419.91. (Exhibit #8)

The Court also failed to divide the 1998 IRS community tax liabilities of $1,448.56. (Exhibit #9)

The Court's failure to modify, correct and/or reform its order in this respect leaves the Petitioner with all the Community liabilities.

24. FAILURE OF THE COURT TO ORDER THE RESPONDENT TO RETURN THE PETITIONER'S PERSONAL PROPERTIES.

THE FINAL DECREE OF DIVORCE signed by the Court on September 13, 2002 is erroneous by not ordering the Respondent to return to the Petitioner his personal property listed below:

A. Manuscript of a book titled "Kuwait Crisis, An Insider Account" plus documents and correspondence between the Petitioner and the White House Kuwait task force, Kuwait government in exile, the USA Air Force Command for Desert Storm and Kuwait ALAWDA task force.

B. Manuscript of a book titled "Advanced Techniques for Altera Deepwater Drilling" plus technical research paper, field data and photograph of various tools and equipment.

C. A twenty four person antique silverware set in three mahogany wooden boxes, the only item the Petitioner elected to inherit from his late mother's estate. This silverware set has been in the Petitioner's family for two generations, the market value of $8200 is nothing compared to its sentimental value to the Petitioner and his family.

THE Courts failure to modify, correct and/or reform its order in this respect is rewarding the Respondent for her untruthful statement, that she did not have the

Petitioner's personal property and all her further benefit of the use of the Petitioner's properties.

TIMELY FILED MOTION

Petitioner files this motion in accordance with the Texas Rules of Civil Procedure 329b in that the Judgment sought to modified, corrected and reformed was signed on September 13, 2002. WHEREFORE, Petitioner request the Court to modify, correct or reform the judgment in accordance of the allegations stated herein and render a modified judgment in the form of the judgment which is attached to this motion as Exhibit "A"

No. 2000-63348

In the District Court
Harris County Texas
309th Judicial District

In the Matter of The Marriage of

Adel Sheshtawy and Amal Sheshtawy

v.

Tri-Max Industries, Inc. and Drill Bit Industries, Inc.
Cross-Defendants

9/27/2002

1. Petitioner, ADEL SHESHTAWAY, sued Respondent. AMAL SHESHTAWAY, for divorce December 14, 2000 on the grounds of

- Respondent has committed adultery and continues to commit adultery

- Respondent is guilty of gross cruel treament toward Petitioner of a nature that renders. further living together insupportable.

- The marriage become insupportable because of discord or conflict of personalties between Petitioner and Respondent that destroys the legitimate end of the marriage relationship and preventary reasonable expectation of reconciliation.

2. The Respondent, AMAL SHESHTAWAY, filed for SEVEN Continuaaces to delay the final divorce judgment in this case. The Respondent's delay is intentional to order to obtain USA Citizenship under the Violence Against Women act by a crime, planned and executed by the Respondent, AMAL SHESHTAWAY, and non-party accomplice, ANNA HESSLERING against the Petitioner.

3. Petitioner filed on January 2, 2002 a MOTION TO RECUSE, HONORABLE JUDGE FRANK RYND based on clear personal prejudice and personal bias against the Petitioner. The PETITIONER'S MOTION TO RECUSE was hEard and denied on March 14,2002.

4. After March 14, 2002, HONORABLE JUDGE FRANK RYND became cautiousabout his prejudice and racial biased remarks against the Petitioner on the records but his actions and revenge against the Petitioner for filing MOTION TO RECUSE against him spoke louder then his words. A few examples of HONORABLE JUDGE PRANK RYND's actions were clear signs of his personal bias and prejudice against the Petitioner.

5. HONORABLE JUDGE FRANK RYND committed the Petitioner to the Harris County Jail, for the first time of his life for alleged Contempt of Spouse Support Court order contrary to fact and evidence in the records. Petitioner, Pro. Se. imprisonment 10 days before the trial date and until July 9, 2002, the second day of the trial caused him maximum damage in his preparation for the final trial.

6. The Respondent, AMAI. SIIESHTAWY, filed on July 9, 2002, during the trial of the case, an untimely, unverified Motion to Recusc HONORABLE JUDGE FRANK RYND for the sole purpose of delay.

7. The divorce case was tried on July 8-12, 2002. On August 2, 2002 the Court issued the final ruling and entered on the records it rendition of the DECREE OF DIVORCE and division of properties on the above styled and number case.

8. Petitioner filed NOTICE OF APPEAL pursuant to Rule 25 of Texas Rules of Appellant Procedure on December 10, 2002. Petitioner's appeal was assigned to THE FOURTEENTH SUPREME JUDICIAL DISTRICT OF TEXAS of Houston,

FACTS

9. After August 2, 2002 and before August 23, 2002, Respondent. AMAL SHESHTAWY, retained Mr. Shawn Casey, a long time personal friend of HONORABLE JUDGE FRANK RYND as her attorney.

10. Petitioner has reason to believe that the Respondent was indirectly referred to Mr. Shawn Casey by the HONORABLE JUDGE FRANK RYND,

11. HONORABLE JUDGE FRANK RYND and Mr. Shawn Casey were classmates and close friends while attending Department of Art at the University of Texas at Austin in the mid 1970.

12. Mr. Shawn Casey was the sponsoring brother of HONORABLE JUDGE FRANK RYND in an exclusive fraternity during their University of Texas college years

13. HONORABLE JUDGE FRANK RYND while in private practice from 1976 to 1990 consulting regularly with Mr. Shawn Casey to a degree that they could be considered partners.

14. Mr. Shawn Casey was the Master of Ceremony for HONORABLE JUDGE FRANK RYND during his swearing in ceremony as Judge for the Harris County 309th Court on 2001.

15. HONORABLE JUDGE FRANK RYND is a frequent guest at Mr. Shawn Casey's residence including 2002 Thanksgiving dinner.

16. HONORABLE JUDGE FRANK RYND accepted and granted a MOTION TO CONTINOUS filed directly by the Respondent without service to the Petitioner or other parties in the case.

17. On August 23, 2002, the scheduled hearing set by the Court to approve and sign the FINAL DECREE OF DIVORCE prepared by the Petitioner as per the Court order on August 2, 2002. The Respondent moved the Court for a two week Continuance to hire attorney. The Court granted the Respondent Continuance and reschedules the hearing for September 6, 2002. The Court granted the Respondent Continuance without allowing the.Petitioner an opportunity to respond.

18. Petitioner has reason to believe that Continuance of the hearing was granted to the Respondent by HONORABLE JUDGE FRANK RYND before the hearing.

19. On September 6, 2002, the Respondent and attorney Shawn Casey requested a Continuance to hire a second attorney; the Court granted the Respondent Continuance and rescheduled the hearing for September 13, 2002. No notice of appearance or motion for substitution of counsel was ever filed with the Court by attorney Shawn Casey as Respondent's attorney of records.

20. On September 12, 2002, the Petitioner received from the Respondent and attorney Shawn Casey an incomplete draft of FINAL DECREE OF DIVORCE with incorrect changes. Attorney Shawn Casey transmitted by fax on September 12, 2002 the incomplete draft to the other parties in the case with misleading cover sheet which lead one of the parties to believe that attorney Shawn Casey represented the Petitioner. (Exhibit #2)

21. On September 13, 2002 at 9:15 am outside 309 Family Court, attorney Shawn Casey and the Respondent handed the Petitioner a FINAL DECREE OF DIVORCE. The Petitioner attempted to read Casey's document when the Court called the parties for the scheduled hearing.

22. The Petitioner informed the HONORABLE JUDGE FRANK RYND that he had received the Respondents version of the FINAL. DECREE OF DIVORCE only 15 minutes earlier and had not had a

chance to read it. The Petitioner requested a Delay or Continuance of the hearing to discuss the changes with the Respondents attorney.

23. HONORABLE. JUDGE FRANK RYND denied the Petitioners MOTION FOR DELAY OR CONTINUANCE of the hearing and stated on the record quote 'I will sign and it you don't like it, you can file for a new trial" end quote. "the HONORABLE JUDGE FRANK RYND signed the document without reading it.

24. Respondent and attorney Shawn Casey did not comply with the Local Rule 3.8. which requires furnishing all opposing parties with a copy of the proposed order at least Five (5) days prior to entry date. Neither the Petitioner or the Third Party Defendant or Intervener had sufficient notice of the FINAL DECREE OF DIVORCE transmitted by attorney Shawn Casey to the Court on September 13, 2002.

25. The FINAL DECREE OF DIVORCE as signed by HONORABLE JUDGE FRANK RYND on September 13, 2002 was Modified and Reformed by the Court without notice, hearing or presence of Petitioner.

26. On October 8, 2002 the Petitioner filed with the Court and serve on all parties of records a Motion to Modify, Correct and/or Reform the Final Decree of Divorce.

27. HONORARLE JUDGE FRANK RYND personally set the date for the Petitioner's Motion to Modify, Correct and/or Reform the Final Decree of

Divorce on October 31, 2002 at 9:00 am. When the Petitioner reminded him that the same date had been set for hearing the Respondent's attorney, Mr. Shawn Casey to commit the Petitioner to the Harris County Jail. The Petitioner asked the HONORABLE JUDGE FRANK RYND to allow the scheduling for his motion before October 31, 2002.

28. The HONORABLE JUDGE FRANK RYND stated quote "WE WILL HEAR YOUR MOTION FIRST BEFORE WE PUT YOU IN JAIL" end quote.

29. HONORABLE JUDGE FRANK RYND ruled on Mr. Shawn Casey Motion to Commit the Petitioner without a hearing and a complete disregard to the due process of Law and rules of the Court.

30. On October 31, 2002, the HONORABLE JUDGE FRANK RYND heard the argument for the Petitioner Motion to Modify and Correct the Final Decree of Divorce' without any input from the Respondent's Counsel. The HONORABLE JUDGE FRANK RYND refused to rule on the motion and stated "I will let you know your ruling. As of today December 13, 2002, no ruling has been rendered by the HONORABLE JUDGE FRANK RYND on the motion.

31. The HONORABLE JUDGE FRANK RYND denied the Petitioner the right for a Court appointed Counsel and committed the Petitioner to Harris County Jail with a vague and confusing commitment order. The Petitioner has spent more time in the Harris County Jail than his sentence was to be.

C. ARGUMENTS & AUTHORITTESS

32. The due process clauses for both the Texas and the United States Constitutions guarantees a party an impartial and disinterested tribunal in civil cases. Marshall v. Jerrico. Inc, 446 U.S. 238, 242, 100 S.Ct. 1610, 1613 (1980); Metzger v Sebek, 892 S.W.2d 20, 37 (Tex. App. - Houston ()st Dist) 1994, writ denied)

33. In this case the personal prejudice and bias of THE HONORABLE JUDGE FRANK RYND, Presiding Judge of Court 309 will deprive the Petitioner of a fair trial in violation of the due process clauses for both the Texas and the United States Constitution and in violation of Texas Rule of Civil Procedure 18b because:

- The judge's impartiality might reasonably be questioned. Tex. R. Civ. P 18b (2) (a); Dunn v. County of Dallas, 794 S.W.2d 560, 562 (Tex.App-Dallas 1990, no writ). In this case, it is reasonable to question the impartiality of THE HONORABLE JUDGE FRANK RYND.

- The judge has a personal bias or prejudice against the Petitioner's National Origin Tex. R. Civ.P. 18b(2)(b); Aetna Life Ins. Co v. Lavoie. 475 U.S.813,821-822, 106 S.Ct. 1580, 1585 (1986),Wright v Wright. 867 S.W.2d 807,811 (Tex.App.-El Paso 1993. writ denied)

Petitioner prays that the Judge recuse himself from this case. Petitioner prays for general relieve.

AFFIDAVIT OF PETITIONER ADEL SHESHTAWY

STATE OF TEXAS
COUNTY OF HARRIS

12/18/2002

Before me, the undersigned notary, on this day, personally appeared ADEL SHESHTAWY, a person whose identity is known to me. After I administered an oath to him, upon his oath he said:

My name is ADEL SHESHTAWY and I am capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

Mr. Shawn Casey, attorney and very close friend of HONORABLE JUDGE FRANK RYND, is in complete control and practically dictating the ruling of District Count 309. Harris County, Texas in , any hearing regarding case no. 2000-63348, in the matter of the marriage of ADEL, SHESHTAWY, Petitioner and AMAL SHESHTAWY, Respondent, is clear from the following example:

A. Mr. Shawn Casey will decide if the presiding Judge or the Associate Judge will hear the motion reversing initial arrangement of the Court in a personal request to the presiding Judge in his office out side the regular hearing.

B. Mr. Shawn Casey will dictate the decision of the court regarding any motion out side the court room.

C. Mr. Shawn Casey, with his influence on HONORABLE JUDGE FRANK RYND, was able to dictate where the Petitioner Pro. Se. sit in the court room, changing what was acceptable to three previous judges for one and half year,

D. Mr. Shawn Casey is the only person who has used his cellular phone in the court room.

The above statement of Mr. Shawn Casey's influence over HONORABLE JUDGE FRANK RYND is true and supported by court records.

The clear influence of Mr. Shawn Casey is reflected in depriving the Petitioner of due process and further influencing the existing biased and impartiality of HCNORABLE JUDGE FRANK RYND.

No. 2000-63348

In the District Court
Harris County Texas
309th Judicial District

In the Matter of The Marriage of

Adel Sheshtawy and Amal Sheshtawy

v.

Tri-Max Industries, Inc. and Drill Bit Industries, Inc.
Cross-Defendants

//****

AMENDED PETITIONER'S MOTION
FOR NEW TRIAL

TO THE HONORABLE PRESIDING JUDGE OF THE SECOND ADMINSTRATIVE JUDICIAL REGION OF TEXAS

Petitioner, ADEL SHESHTAWY, asks the Honorable Olen Underwood, Presiding Judge or the Second Administrative Judicial Region of Texas, to grant a leave to file the attached Amended Petitioner's Motion for new trial based on new discovered evidence that Judge Frank Rynd and Shawn Casey were working in the same law firm, in the interest of justice and fairness, and in support of this motion would show the following:

A. Introduction

Petitioner, on December 27, 2002, filed a motion to reverse Honorable Judge Prank Rynd presiding Judge of the 309'h District Court, Harris County, Texas.

After trial to the court, the court signed an order on April 24, 2003 denying Petitioner's motion to recuse.

I

Petitioner discovered on May 28, 2003 that Honorable Judge Frank Rynd and Shawn Casey were members of the same law firm in or about 1976. Exhibit #1 shows that Judge Frank Rynd and Shawn Casey were working for the late Bob Casey in 1976.

II

Denial of Opportunity to Examine a Subpoenaed Witness and Denial of Opportunity to Offer Direct Evidence on Judge Frank Rynd's Bias, Impartiality and Ex-parte Communication.

The Court erred in granting a motion to quash the subpoena or Judge Frank Rynd who would have offered relevant material and non privileged testimony regarding Petitioner's allegation in regard to recusal. It is firmly established that "NO PERSON HAS A PRIVILEGE TO REFUSE TO BE A WITNESS"

As part of the Sixth Amendment right to Confrontation, a Petitioner must he allowed great latitude to show any fact that would tend to establish ill feeling bias or motive on the part of the witness testifying against Petitioner, or to establish other relevant facts. Delaware v. Vun Arsdall, 475 U.S. 673,

678, 106 S.Ct. 1431. 1434-35. 89 L.Ed.2d 674 (1986) (emphasis add); Davis v. Alaska, 415 U.S. 305, 316-17, 94 S.CT. 1105. 1110-11, 39 L.Ed.2d 347 (1974): Hurd v. State. 725 S.W.2d, 249, 252 ("Tex. Crim. App. 1937). Moreover, our rules of evidence expressly recognize the right to impeach a witness by proof of circumstances or statements showing bias or interest of a witness. TEX. R. EVID. 613(b).

Bias and motive are never collateral, particularly in the instant case which relies, in part on theses issues to prove the need for recusal.. Steve v. State, 614 S.W.2d 137, 140 (Tex. Crim. app. irrelevant"). "Great latitude should be allowed the accused in showing any fact that would tend to establish ill feeling, bias, motive, and animus on the part of any witness testifying against [him]," Cmvtillo v. State, 939 S. W.2d 758 (Tex. App. Houston [14'h Dist.) 1997. Writ rev'd). "The evidence need not prove or disprove a particular fact; the evidence is sufficiently relevant if it provides a small nudge' towards proving or disproving any fact of consequence, Racer v. State, 821 S.W.2d 715, 717 (Tex. App. - Houston [14th Dist) 1991, no pet,); see also, Lagrone v. State 821 S.W.2d 602, 613 (Tex. Crim. App. 1997); McDaniel v, Smite, 3 S.W.3d 176, 180 (Tex. App. - Austin 1996, pet. refd). Inquiry into bias and motive "encompasses all facts and circumstances, which when tested by human experience, tend to show that a witness may shade his testimony for the purpose of helping to establish one side of the cause only." Carroll v. State, 916 S. W.2d 494, 497-98 (Tcx. Crim. App. 1996) (Emphasis in original). (Quoting Jarkson v. State, 482 S.W.2d 864, 868 (Tex. Crim. App. 1972))

Judge Rynd's testimony also related to other pertinent issues. Specifically, but not exclusively, the evidence related to non existence and/or destruction of court records for the August 23, 2002 and July 3, 2002 hearings in the 309"' District Court.

Judge Rynd stated on the record (7/10/03 R. p. 15) that July 3, 2002 hearing was on the record and was to be recorded.

Judge Rynd would have offered confirmation and/or denial of Petitioner's Exhibit #2 & 3 which clearly prove Ex-parte communication between Judge Rynd and the Respondent AMAL SHESHTAWY and her attomey SHAWN CASEY.

The trial court ruled that Ex-parte communications exist between two persons and the Petitioner could prove the Ex-parte communication through examining the other person rather than Judge Rynd. One of the other persons is Respondent AMAL SHESHTAWY who is an adverse and hostile party, who has an interest in preventing Judge Rynd recusal. Further, Respondent AMAL SHESHTAWY is not credible as evidence by the following:

1. AMAL SHESHTAWY, asked her husband to sign a false statement under oath to the Immigration and Naturalization Service to obtain USA citizenship as spouse of a USA citizen.

2. Respondent AMAL SHESHTAWY falsely accused her husband or assaulting her on November 6, 2000 to obtain the USA citizenship under the Federal Violence against Women Act. Title 8, Section 1154 (a)(i)(A)(iii) of

the United States Code, "an alien seeking permanent residency if the marriage was entered into in good faith by the alien spouse and during the marriage the spouse was battered by his or her spouse" (Exhibit # 2).

3. Respondent AMAL SHESHTAWY, alleged that she is living since November 6, 2000 on $2250 spousal support order by the court and paid by Petitioner, plus support from her brothers and sisters, but she never produce any evidence to support the alleged support ofher family.

These are only few examples of her lack of credibility.

The assumption that AMAL SHESHTAWY would testify truthfully about her ex-parte communications with Judge Rynd is an unrealistic assumption given her interest in the outcome of the case and her history of misrepresenting the truth. The limitation imposed by excluding Judge Rynd's testimony was an impermissible denial of Petitioner's right to confrontation and his due process right's.

The error in quashing the subpoena for Judge Rynd was material and was likely to injure, and indeed did injure the right or Petitioner to receive a fair trial and prove the ground for Judge Rynd's Recusal

III

Judge Frank Rynd Shows Further His Bias and Impartially by Authorizing The Issuing of Warrant to Arrest The Petitioner in Honorable Judge Underwood's Court Room; Immediately After the

April 24, 2003, Rccusal Hearing While The Court is in Session.

Petitioner during the April 24, 2003 hearing felt a sharp pain in the left side of his chest and numbness in his left arm and partial loss of memory. Petitioner has a history of heart attacks in the last six months.

Petitioner discontinued his presentation to the court without calling himself as a witness due to his physical and mental conditions. Petitioner stayed in the court room after taken several Nitroglycarin tablets to prevent another heart attack. The court bailiff sat behind the Petitioner, and without showing any warrant, stated to the Petitioner that he was under arrest.

Judge Rynd authorized and/or approved a warrant to arrest the Petitioner at 8:22 AM on April 24, 2003 two hours before the hearing to recuse started and six hours before the ruling of this Honorable Court TRCP 18a, (b) in part state " Except for good cause sued in the order in which further action is taken, the Judge shall make no further orders and shall make no further action in the case after filling of the motion and prior to hearing on the motion."

Furthermore and without waving the forgoing Petitioner filed for appeal on December 10, 2002, and the plenary power of the 309th Districts Court, expired on January 9, 2003.

Admittedly the Texas Family Code permits the court to enforce a temporary order of child support, but:

There are no children born or adopted during the marriage in this case, and

There is no temporary order of support issued by 309th District Court before January 9, 2003. The only temporary order issued by the Court before January 9, related to attorney fees.

The arrest of Petitioner by a void or avoidable order of the 309th District Courts another evidence of Judge Rynd's bias, prejudice, and partiality.

For these reasons, and in the interest of justice and fairness, Petitioner prays that the court grants Petitioner the leave to file this attached motion for a new trial in regard to his motion to recuse the Honorable Judge Freank Rynd.

In the alternative, and only in the event the court denies this motion, the Petitioner prays tho court accept the Petitioners Pro Se. written notice of appeal.
December 6, 2001

(Ed. Note letter from Shawn Casey & Associates)

12/6/2001

Mr. Kenneth W. Anderson, Jr
Director of Governmental Appointments
P. 0. Box 12428
Austin, Texas 78711

Re: Frank Rynd's Application for appointment to the 309th District Court

Dear Mr. Anderson:

As a family law practitioner with an emphasis on appellate family law, the Governor is to be commended for his appointment of Judge Guzman to the 14th Court of Appeals. Further, it is my understanding that Frank B. Rynd is currently under consideration by the Governor to be appointed to the vacancy in the 309th District Court created by Judge Guzman's elevation. I have known Frank since he was a student at the University of Texas at Austin and know him to be extremely bright, hard working and one whose integrity is beyond reproach. Even as an upperclassman, I was so impressed by Frank, that I recommended him to be hired by my father, the late Congressman, Bob Casey, to work in Washington, D.C. as one of my father's interns. It was a recommendation that I never regretted and for which my father was ever thankful.

Apart from his love of the law, Frank has always been an active member of his community, volunteering his time to such activities as Big Brothers, Juvenile

Diabetes Foundation and Strake Jesuit Alumni Association, to name just a few. He is immensely popular with his peers and if appointed will actually enjoy the grind of a campaign With his outgoing personality, he can assure that the Republicans will hold onto the 309th District bench. Please inform the Governor that Frank will make an excellent judge. Do not hesitate to call me if you have any further questions about Frank or his qualifications.

Sincerely,
Shawn Casey

BEST AVAILABLE COPY

No. 04-03-00109-CV

COURT OF APPEALS OF TEXAS, FOURTH DISTRICT, SAN ANTONIO

Adel SHESHTAWY, Tri-Max Industries, Inc., and Drill Bit Industries, Inc., Appellants

v.

Amal SHESHTAWY, Appellee

9/29/2004

JUDGMENT

In accordance with this court's opinion of this date, the portion of the trial court's judgment relating to the division of the community estate is REVERSED, and the cause is REMANDED to the trial court for further proceedings consistent with this opinion. The remainder of the trial court's judgment is AFFIRMED. Costs of the appeal are taxed against the parties who incurred them.

SIGNED September 29, 2004.

No. 04-03-00109-CV

COURT OF APPEALS OF TEXAS, FOURTH DISTRICT, SAN ANTONIO

Adel SHESHTAWY, Tri-Max Industries, Inc., and Drill Bit Industries, Inc., Appellants

v.

Amal SHESHTAWY, Appellee

10/21/2004

ORDER

Appellee's (Arnal Sheshtawy) Motion for Rehearing is DENIED.

No. 04-1017

SUPREME COURT OF TEXAS

Adel Sheshtawy, Tri-Max Industries, Inc. and Drill Bit Industries, Inc.

v.

Amal Sheshtawy

1/13/2005

Dear Counsel:

Today the Supreme Court of Texas issued the enclosed corrected order denying the petitions for review as of December 31, 2004 in the above-referenced case. Due to a clerical error, the denial of these petitions was left off of the December 31, 2004 orders. Please feel free to contact our office if you have any questions.

No. 04-1017

SUPREME COURT OF TEXAS

Orders Pronounced January 13, 2005

Corrected Order

Orders on Petitions for Review

Adel Sheshtawy, Tri-Max Industries, Inc. and Drill Bit Industries, Inc.

v.

Amal Sheshtawy

(denied as of December 31, 2004)

No. 04-1017

SUPREME COURT OF TEXAS

Adel Sheshtawy, Tri-Max Industries, Inc. and Drill Bit Industries, Inc.

v.

Amal Sheshtawy

3/11/2005

Dear Counsel:

Today the Supreme Court of Texas denied the motion for rehearing of the above referenced petition for review. (Justice Green not sitting).

(2)

OFFICE OF THE CLERK

No. 04-1669

IN THE

Supreme Court of the United States

ADEL SHESHTAWY, TRI-MAX INDUSTRIES, INC., AND DRILL BIT INDUSTRIES, INC., PETITIONERS

v.

AMAL SHESHTAWY

PETITION FOR A WRIT OF CERTIORARI TO THE FOURTH COURT OF APPEALS OF TEXAS AT SAN ANTONIO, TEXAS

PETITION FOR REHEARING

Richard N. Countiss
Counsel of Record
Texas Bar No. 04887000
COUNTISS LAW FIRM
8441 Gulf Freeway
Suite 600
Houston, Texas 77017-5051
TEL: 713/230-2203
FAX: 713/230-2215
Attorney for Petitioners

CURRY & TAYLOR ♦ WASH D.C. ♦ (202) 223-3160 ♦ USSCINFO.COM

NOTE

Original Pagination
Not Continuous

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTRODUCTION 1

ARGUMENT 1

PRAYER 8

CERTIFICATION 9

PROPERTIES OF MARRIAGE, 104 COLUM. L. REV. 75 (2004)..2

RODRIGUE V. RODRIGUE: THE FIFTH CIRCUIT HOLDS THAT COPYRIGHT AND COMMUNITY PROPERTY LAW CAN PEACEFULLY COEXIST, LANG, 76 TUL. L. REV. 541, 552-53 (2001) 4

STOP MUCKING UP COPYRIGHT LAW: A PROPOSAL FOR A FEDERAL COMMON LAW OF CONTRACT, GIBBONS, 35 RUTGERS L.J. 959, 1032-33 (2004) 6

INTRODUCTION

The primary issue in this case originated in a divorce case. The husband developed a product that he patented, the wife wanted an ownership interest in the patent as part of the property distribution, and the Texas courts gave her an ownership interest. This Court should address the issues in the case for the additional substantial reasons stated below.

ARGUMENT

1. The issue is important to the jurisprudence of the United States. - Petitioners are aware that the Court grants petitions only in cases containing policy questions of national importance. They suggest, however, that this case satisfies that requirement. It presents a policy question on patent law that (1) has not been addressed by the Court and (2) has widespread implications for litigants throughout the United States.

There are thousands of divorces and contract disputes each year and some portion of those will require the courts to determine ownership or division of patents. Until this Court provides guidelines for the resolution of that issue, the results throughout the nation will be erratic.

Because virtually no other courts have addressed this problem within the context of patent law, the parallel decision in copyright law, *Rodrigue v. Rodrigue*, 218 F.3d 432 (5th Cir. 2000), cert. den. 532 U.S. 905 (2001), must be used to illustrate the importance of the issue.

Since *Rodrique* was decided in 2000, it has been cited by nine other courts.[1] It has been the subject of 22 law review articles.[2]

---

[1] *In re Valley Media, Inc.*, 279 B.R. 105 (Bankr. D. Del. 2002); *Bridgmon v. Array Sys. Corp.*, 325 F.3d 572 (5th Cir. 2003); *Kasten v. Jerryton*, 2005 U.S. Dist. LEXIS 340 (E.D. La. Jan. 6, 2005); *Teller v. Teller*, 53 P.3d 240 (2002 Haw.); *Lanza v. Lanza*, 898 So. 2d 280 (La. 2005); *Riceland Petroleum Co. v. N. Am. Land Co.*, 869 So. 2d 894 (La. App. 2004); *Phila. Eagles Football Club, Inc. v. City of Philadelphia*, 823 A.2d 108 (Pa. 2003) (Concurring Opinion); *Alsenz v. Alsenz*, 101 S.W.3d 648 (Tex. App.–Houston [1st Dist] 2003); *Miner v. Miner*, 2002 Tex. App. LEXIS 5841 (Tex. App.–Corpus Christi 2002).

[2] *Entrepreneurial Copyright Fair Use: Let the Independent Contractor Stand in the Shoes of the User*, 57 Ark. L. Rev. 539 (2004); *Unequal Treatment and Creditor Frustrations: The Limited Impact of Legalizing Same Sex Marriage*, 21 Bank. Dev. J. 743 (2005); *Publicity Rights As Property Rights*, 23 Cardozo Arts & Ent. 71 (2005); *Properties of Marriage*, 104 Colum. L. Rev. 75 (2004); *Copyright Registration Practice for the Non-Copyright Attorney*, 52 LA Bar Jnl. 448 (2005); *Recent Developments: TM Intellectual Property Law*, 48 LA Bar Jnl. (2000); *Community Property and the Copyright Act: Rodrigue's Recognition of a Community Interest in Economic Benefits*, 61 La. L. Rev. 655 (2001); *Acknowledging Information Technology Under the Civil Code: Why Software Transactions Should Not Be Treated As Sales*, 50 Loy. L. Rev. 461 (2004); *How Copyrights Became Community Property (Sort of): Through The Rodrigue v. Rodrigue Looking Glass*, 47 Loy. L. Rev. 631 (2001); *Fifth Circuit Symposium: Intellectual Property*, 46 Loy. L. Rev. 1059 (2000); *Foreclosing on Fame: Exploring The Uncharted Boundaries of the Right of Publicity*, 77 N.Y.U. L. Rev. 1322 (2002); *Intellectual Property Distribution in Divorce Settlements*, 18 Quinn. Prob. Law Jour. 160 (2004); *Stop Mucking Up Copyright Law: A Proposal for a Federal Common Law of Contract*, 35 Rutgers L.J. 959 (2004); *Annual Survey of Texas Law: Family Law: Husband and Wife*, 58 SMU L. Rev. 877 (2005); *Annual Survey of Texas Law: Family Law: Husband and Wife*, 57 SMU L. Rev. 991 (2004); *Annual Survey of Texas Law: Family Law: Husband and Wife*, 56

Most important, there is no uniformity of agreement on the correctness or wisdom of the *Rodrigue* decision. Some scholars think limiting the non-investor spouse to receipt of economic benefits from the federally created property right is a good solution to the conflict between state and federal rights. A Tulane Law Review note concluded with this observation:

> With respect with the issue of a copyright as community property, the court adopted the correct interpretation. The court in the noted case agreed with the conclusion of the Worth court, but adopted a distinct approach. By adopting Nimmer's proposed second solution, the Fifth Circuit's decision is consistent with the basic principles of both community property and copyright law. This decision allows both copyright and community property law to coexist under Louisiana state law. The justifying principle for community property is economic equality, which is clearly maintained

---

SMU L. Rev. 1659 (2003); *Deriving a (Moral) Right for Creator*, 36 Tex. Int'l L.J. 735 (2001); *Intellectual Property*, 33 Tex. Tech L.Rev. 911 (2002); *Rodrigue v. Rodrigue: The Fifth Circuit Aligns with Worth - Accepting Copyright as Community Property*, 3 Tul. J. Tech. & Intell. Prop. 165 (2001); *Rodrigue v. Rodrigue: The Fifth Circuit Holds That Copyright and Community Property Law Can Peacefully Coexist*, 76 Tul. L. Rev. 541 (2001); *When Civilian Principles Clash with the Federal Law: An Examination of the Interplay Between Louisiana's Family Law and Federal Statutory and Constitutional Law*, 76 Tul. L. Rev. 519 (2001); *The "In Writing" Requirement for Copyright and Patent Transfers: Are the Circuits in Conflict?*, 26 U. Dayton L. Rev. 43 (2000).

> by protecting Veronica's financial interest with a one-half share in all the fruits of the copyright and its derivatives. The court is also promoting the basic principles of copyright law of encouraging authorship and not disrupting the processes and stability needed for authors and purchasers of copyrights. This solution is consonant with both copyright and community property law allowing both areas of law to coexist peacefully.

Rodrigue v. Rodrigue: The Fifth Circuit Holds That Copyright and Community Property Law Can Peacefully Coexist, Lang, 76 Tul. L. Rev. 541, 552-53 (2001). (Footnote omitted.)

Some scholars think the federal courts should be able to resolve the problem by developing a federal common law of contracts. Professor Gibbons of the University of Toledo College of Law pointed out the national issues in this problem and reached the following conclusion, in a Rutgers Law Journal article:

> Copyright law is pervasive throughout a modern economy. As in the nineteenth century, land (real property) was the foundation of wealth, power, and privilege; copyright is the foundation of the modern digital economy. As copyrighted works became increasingly valuable and even easier to copy, there was a gradual shift away from copyright law to contract law to protect the interests of copyright owners and more recently to digital rights management systems. This potential conflicted with the delicate balance

between owners' exclusive rights and the public interest in access and use of the work. Contract law, as state law, inherently conflicts with Congress' express goal of uniformity. State contract law may yield different results when interpreting the same contract. This frustrates Congresses goal of uniformity and the need for market efficient contract law because copyrighted content can and must flow nationally in the stream of commerce in an orderly, predictable fashion. In light of 17 U.S.C. $ S 301 preemption and Supremacy Clause preemption, state law is an unstable foundation basis on which to build a private ordering of copyright law. The courts are unsure whether private ordering inconsistent with the default principles of copyright law are preempted or whether only affirmative public laws by state legislatures are preempted. This conflict between courts inherently breeds inconsistency. Federal courts are unable to fulfill their duty to create uniform federal law because they must apply state law to many copyright disputes. Consequently, federal courts must be released from any obligation to interpret an agreement in the same manner that a state's highest court would and must be free to impose some uniform contract law principles when construing copyright agreements. In essence, there must be a federal common law of contract to govern copyright. This new common law of copyright should evolve on a case-by-case basis as technology changes and as new business models are introduced by incorporation. It should draw on commercial experience and

> practices with the UCC, common law of contracts, and of course, UCITA. Nevertheless, if Congress elects to enact a federal body of contract law, this law should be consistent with the goals of the Copyright Act. Individuals should not be permitted to contract around provisions in the laws that are designed to protect the public's interest in promoting the useful arts and sciences. In either case, judges should always take care to encourage sound businesses practices while pruning those that frustrate the underlying copyright policies.

Stop Mucking Up Copyright Law: A Proposal for a Federal Common Law of Contract, Gibbons, 35 Rutgers L.J. 959, 1032-33 (2004).

Some scholars think state property rights should play no part in determining copyright ownership: Professor Ciolino of Loyola University made this suggestion:

> The Fifth Circuit in *Rodrigue v. Rodrigue* undertook a commendable yet formidable task: to "reconcile the respective rights and obligations of authors under federal copyright law and their spouses under Louisiana community property law." As a matter of federal preemption law, the court failed. It failed not for want of effort or creativity. Rather, it failed because the rights of authors and spouses to copyrighted works are irreconcilable under our federal statutory and constitutional framework. It failed, in short, because neither the Constitution nor the

> Copyright Act permit the vesting of copyright ownership, or any of its constituent rights, in non-author spouses.
>
> * * *
>
> The problematic and ineffectual rule announced by the Fifth Circuit in *Rodrigue* should be short lived. Sister Circuits should reject its curious approach and simply hold that federal copyright law preempts state community property law. So too should state courts in Louisiana and elsewhere. Until then, misadventure awaits the judges, litigants, and lawyers who now must pass through *Rodrigue's* looking glass to implement its odd new copyright-ownership regime.

How Copyrights Became Community Property (Sort of): Through The Rodrigue v. Rodrigue Looking Glass, Ciolino, 47 Loy. L. Rev. 631, 662-63 (2001). (Footnotes omitted.)

The same problems and arguments are present in patent law. The Court has held that the federal patent laws preempt state law, *Bonito Boats, Inc. v. Thunder Craft Boats, Inc.*, 489 U.S. 141, 146-48 (1989), but the nature, degree, and extent of that preemption and its impact on state community property law has not been addressed. The Court should use this case as a vehicle to tell the nation's bench and bar how the sometimes competing rights established by the two bodies of law are to be harmonized, and eliminate the present confusion and uncertainty.

2. The Texas Courts are wrong. - In the second argument in their Petition, Petitioners

illustrated the errors of the lower courts. That argument need not be repeated. It suffices to say that whatever the correct policy decision may be, it is not the policy set in this case for Texas, a policy that will also be persuasive in other jurisdictions.

PRAYER

For the foregoing reasons and reasons previously stated, Petitioners ask the Court to reconsider its decision and grant this Petition.

Respectfully submitted,

Richard N. Countiss
Counsel of Record
Texas Bar No. 04887000
COUNTISS LAW FIRM
8441 Gulf Freeway,
Suite 600
Houston, Texas 77017-5051
713/230-2203
FAX : 713/230-2215
Attorney for Petitioner

CERTIFICATION

I hereby certify that the petition for rehearing is filed in good faith and not for delay.

Respectfully submitted,

Richard N. Countiss
Counsel of Record